

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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GARY HAUENSTEIN

Claimant,

and

PELLA CORPORATION

Employer.

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HEARING NUMBER: 08B-UI-09759

EMPLOYMENT APPEAL BOARD  
DECISION AFTER  
GRANTED REHEARING

**NOTICE**

**THIS DECISION BECOMES FINAL** unless a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

**SECTION: 96.5-2-a**

**DECISION**

**STATEMENT OF THE CASE:**

The claimant filed an application for rehearing on the above-listed matter which was granted based on the fact the Board did not review the claimant's written argument. While the written argument was timely mailed, it did not arrive in the Board's office until after a decision had been rendered. The Order allowed the Board to reopen the matter in order to take the claimant's written argument into consideration. The Board is now ready to issue its decision.

**SECTION: 10A.601 Employment Appeal Board Review**

**FINDINGS OF FACT:**

The notice of hearing in this matter was mailed October 23, 2007. The notice set a hearing for November 5, 2007. The claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because the claimant did not timely receive notice of the hearing and did not know the hearing was taking place. The claimant was out of town pursuant to the advice of his physician who "said it would be good therapy to get away for a while..." (See claimant's written argument attached.)

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

Here the claimant did not participate in the hearing through no fault of the claimant. He was out of town when the notice arrived and did not return until late in the day that the hearing was held. It was too late for him to participate in order to present evidence with regard to his medical condition. For this reason, the matter will be remanded for another hearing before an administrative law judge.

**DECISION:**

The decision of the administrative law judge dated November 6, 2007 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

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Elizabeth L. Seiser

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John A. Peno

AMG/fnv

**DISSENTING OPINION OF MARY ANN SPICER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Mary Ann Spicer

AMG/fnv