

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

MICHAEL R MCDOLE

Claimant

HEARING NUMBER: 17BUI-05573

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

STATEMENT OF THE CASE:

The issue of timeliness was raised when the Claimant filed a faxed appeal on July 10, 2017, 11 days beyond the statutory deadline of June 29, 2017. The reason for the delay was because the Claimant was incarcerated at the time the Notice of Decision was mailed, and he did not have access to updating his mailing address. For this reason, we find good cause has been established for the late appeal, and the board shall consider it to be timely.

FINDINGS OF FACT:

The notice of hearing in this matter was mailed June 1, 2017. The notice set a hearing for June 13, 2017. The Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant did not receive the Notice of Hearing, as he was incarcerated at the time it was mailed and delivered; he had no opportunity to update his address. The Claimant did not know the hearing was taking place.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2015) provides:

4. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an 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 because he didn't receive the Notice of Hearing due to his incarceration; inability to update his mailing address; and inability to respond to the notice he never received. The Claimant did not know that a hearing was taking place. 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 June 14, 2017 is not vacated and remains in force unless and until the Department makes a differing determination pursuant to this remand. 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.

Ashley R. Koopmans

James M. Strohman

AMG/fnv