

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

YINNI J MEJIA

Claimant,

and

SWIFT PORK COMPANY

Employer.

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HEARING NUMBER: 13B-UI-00385

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was scheduled for February 13, 2013 in which the issues to be determined were whether the appeal was timely; whether the claimant was discharged for misconduct; and whether the claimant voluntarily left for good cause attributable to the employer. At the start of the hearing, the administrative law judge warned the parties that should a party use a cell phone and the call is disconnected, the administrative law judge would not call the disconnecting party back for their participation.

During the hearing, the claimant became disconnected soon after the start of the hearing because his cell phone no longer had a signal. He was unable to call back to reconnect with the hearing to give testimony regarding the timeliness of his appeal. The administrative law judge did not attempt to reconnect with the claimant. The claimant called back the next day to explain his circumstances, i.e., that even though his battery was good; he could no longer get a signal to proceed in the hearing.

The administrative law judge's decision was issued February 14, 2013, which determined that the claimant's appeal was untimely. The administrative law judge mentioned nowhere in the decision that the claimant called back the following day with an explanation. The decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2011) provides:

5. 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.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the timeliness issue, as the record contains no testimony from the claimant who was inadvertently disconnected from the hearing apparently through no fault of his own. Although the Notice of Hearing forewarns participants "...If possible, avoid using a cell phone to prevent transmission and battery problems...", the notice does not prohibit cell phone usage. In today's contested cases, it is more probable than not that one of the parties to these proceedings will be using a cell phone. Some parties may not even own a landline, which makes it even more probable that a party may be depending on cell phone communication. As with land lines, cell phones may be subject to dysfunction. Here, the claimant called back (although the day after) because his cell phone couldn't maintain a signal. It is clear he intended to follow through with the appeals process, but for the dropped call. Although the administrative law judge took the late call, she made no mention of the call, and whether or not the claimant's explanation had any bearing on her decision. For this reason, the Board shall remand this matter so that the administrative law judge may reopen the record and consider the claimant's late call.

DECISION:

The decision of the administrative law judge dated February 14, 2013 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights. If a hearing is *not* held, then the administrative law judge shall issue a new decision in consideration of the claimant's late call.

John A. Peno

Monique F. Kuester

AMG/fnv

Cloyd (Robby) Robinson