

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

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**NICOLAS BALTAZAR**

Claimant,

and

**CON AGRA-COUNCIL BLUFFS**

Employer.

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**HEARING NUMBER: 08B-UI-10498**

**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 an appeal via facsimile on December 12, 2008, one day beyond the statutory deadline of December 11, 2008. The reason for the delay was because the claimant had a language barrier which hindered his ability to completely understand the Notice of Decision. 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 November 12, 2008. The notice set a hearing for November, 24, 2008. The claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because the claimant, himself, did not completely understand the notice to timely follow its instructions to complete the appeals process.

**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  
administra-

tive 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. Although the claimant did receive the Notice of Hearing, it was not completely meaningful to him. There is no question that due process principles apply in the context of hearings for persons seeking unemployment benefits. Silva v. Employment Appeal Board, 547 N.W.2d 232 (Iowa App. 1996). Two of the benchmarks of due process are adequate notice and meaningful opportunity to be heard. Iowa courts have held that due process requires "the opportunity to be heard at a meaningful time and a meaningful manner." Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

The claimant was not afforded due process rights. The claimant was precluded from fully participating in the hearing before the administrative law judge because the notice was not "meaningful" when he received it and required further time and effort on his part to gain its meaning. Having done so, the claimant's efforts were too late to allow him to present evidence on the merits of the claim. While the claimant was literally provided notice, it had no meaningful effect such that he could timely comply with its instructions. Thus, the notice did not give the claimant an opportunity to be heard at a meaningful time and in a meaningful manner.

Because this Board's decision turns on the procedural issue of due process, it cannot reach the substantive questions in this case. For this reason, the matter will be remanded for new hearing before an administrative law judge.

#### DECISION:

The decision of the administrative law judge dated November, 26, 2008 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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Monique F. Kuester

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would find that the claimant filed an untimely appeal, which would result in my affirming the decision of the administrative law judge in its entirety.

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John A. Peno