

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

JULIA E HERNANDEZ

Claimant,

and

IOWA WORKFORCE DEVELOPMENT
DEPARTMENT

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HEARING NUMBER: 10B-UI-17344

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 held December 16, 2009. The administrative law judge's decision was issued December 18, 2009. The administrative law judge's decision has been appealed to the Employment Appeal Board. That decision determined that the claimant who did not appear or participate in the hearing "defaulted pursuant to Iowa Code section 17A.12(3)..." and the previous decision remained in effect. The employer did not participate, and no evidence was taken.

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 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 record contains no evidence to review upon which the Board can base a decision. In addition, the agency entered a default ruling for which it had no authority. 871 IAC 26.14(9) provides, in relevant part, that "...a party's failure to participate in a contested case hearing *shall not* result in a decision automatically being entered against it." Had evidence been taken or the administrative law judge took

official notice of the administrative file, the Board would be able to proceed with the appeal. That not being the case, the Board must remand this matter for a new hearing.

DECISION:

The decision of the administrative law judge dated December 18, 2009 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, 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.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv