

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building, 4<sup>TH</sup> Floor  
Des Moines, Iowa 50319  
eab.iowa.gov**

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**HTEE SHEE**

Claimant

and

**TYSON FRESH MEATS INC**

Employer

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**HEARING NUMBER: 22B-UI-21013**

**EMPLOYMENT APPEAL BOARD  
DECISION**

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

**DECISION**

**STATEMENT OF THE CASE:**

The issue of timeliness was raised when the Claimant filed an appeal postmarked December 1, 2021, prior to the issuance of the decision that was dated December 3, 2021, and well before the statutory December 20, 2021 deadline. The reason for the timing was because the Claimant didn't participate and justifiably anticipated an adverse decision. For this reason, we find good cause has been established for the early appeal, and the board shall consider it to be timely.

**FINDINGS OF FACT:**

The notice of hearing in this matter was mailed October 26, 2021. The notice set a hearing for November 12, 2021 at 11:00 a.m. The Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant did not provide a telephone number at which she could be reached, and she did not receive a call to participate. The Claimant contacted the administrative law judge within a reasonable timeframe after the start of the scheduled hearing, but the record was closed.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2019) 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 she had not provided a telephone number for the administrative law judge to call. When the Claimant did not receive a call, she contacted the administrative law judge within a reasonable timeframe after the scheduled hearing time, which established her intention to follow through with the appeals process. For this reason, the matter will be remanded for another hearing before an administrative law judge so that the Claimant may avail herself of her due process right.

We caution the Claimant that, barring exceptional circumstances, we will not again excuse a failure to follow the Notice of Hearing instructions for participating in the hearing.

**DECISION:**

The decision of the administrative law judge dated December 3, 2021 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.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

AMG/fnv