

**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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**LEROY M MITCHELL**

Claimant

and

**HY VEE INC**

Employer

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**HEARING NUMBER: 22B-UI-07968**

**EMPLOYMENT APPEAL BOARD  
DECISION**

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

**DECISION**

**FINDINGS OF FACT:**

The Claimant filed an appeal from the February 9, 2021 (reference 01) unemployment insurance decision that **dis**allowed benefits based upon claimant's discharge from employment with the Employer. The Claimant's appeal letter was sent on March 25, 2022 and received on that date. The appeal letter identified the March 17, 2022 overpayment decision (reference 02) as the decision being appealed.

A hearing in the above matter was held May 12, 2022. The administrative law judge's decision was issued June 16, 2022. The administrative law judge's decision has been appealed to the Employment Appeal Board. The Employer did not appear at the hearing because it did not receive the notice of hearing. The Board finds that the decision below failed to address the timeliness issue which is critical to an accurate resolution of this case. Further, the Employer has shown good cause for failure to attend the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2022) 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.

Pursuant to this authority, we review this case and determine to remand it for further proceedings consistent with this decision. We remand first of all because on the face of the Claimant's appeal to the Administrative Law Judge that appeal was a year late to seek review of the February 9, 2021 (reference 01) decision. The Administrative Law Judge did not address the timeliness of this appeal in the decision. Second, the Employer did not participate in the hearing through no fault of the Employer. The Employer did not receive the Notice of Hearing in order to participate. For this reason, the matter will be remanded for another hearing before an administrative law judge.

On remand the Administrative Law Judge should elicit testimony on, and make a determination of, whether or not the Claimant's appeal to the Administrative Law Judge is timely, in addition to taking evidence on the Claimant's separation from employment.

Claimant submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information was not presented at hearing. Accordingly none of the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

**DECISION:**

The decision of the administrative law judge dated June 16, 2022 is not vacated at this time, 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 who shall conduct a new hearing following due notice. After the hearing, the administrative law judge shall issue a decision that provides the parties appeal rights.

The parties are cautioned to read and follow the directions in the notice of hearing, and to carefully note any differing times and PIN numbers listed in that notice of hearing.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn