

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

FABRIZIO DIAZ

Claimant,

and

TASTY TACOS INC

Employer.

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HEARING NUMBER: 14B-UI-02884

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

The Notice of Hearing in this matter was mailed March 19, 2014. The notice set a hearing for April 8, 2014 at 3:00 p.m. The Employer contacted the agency to provide a telephone number at which he could be reached for the hearing. On the day of the hearing, the Employer was not available at that number. However, the Employer contacted the agency within 30 minutes after the start of the hearing when he didn't receive the call.

REASONING AND CONCLUSIONS OF LAW:

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

4. 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 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 Employer did not participate in the hearing because he was not, originally, at the number he provided for the hearing. However, he called in within a reasonable time to follow through with his appeal. This demonstrates the Employer's intention to participate in the hearing. For this reason, the matter will be remanded for another hearing before an administrative law judge so as to avail the Employer of his due process right.

DECISION:

The decision of the administrative law judge dated April 11, 2014 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau. 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.

Kim D. Schmett

Cloyd (Robby) Robinson

AMG/fnv