

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

BALKISSOU ADJOUMA

Claimant

and

CAPTIVE PLASTICS LLC

Employer

HEARING NUMBER: 16B-UI-09591

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The notice of hearing in this matter was mailed September 7, 2016. The notice set a hearing for September 21, 2016. The Claimant did not appear for or participate in the hearing. The reason the claimant did not respond or appear is because she is unable to read English and did not know the hearing was taking place. The languages included on the notice of hearing include English, Spanish, Bosnian, Vietnamese, Korean, Laotian, Chinese, German, and Arabic.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2016) 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.

Ordinarily when a limited English proficiency Claimant understands one of the languages appearing on the notice of hearing, or when the Claimant is illiterate, we would expect the Claimant to take steps to get assistance with the notice. The special circumstances of this case, however, lead us to conclude a remand is warranted. The key circumstances are: (1) the Claimant has limited English proficiency, (2) the Claimant's language (Hausa) is not one contained on the notice of hearing, (3) Workforce has repeated notes in the file showing the Claimant needed a Hausa interpreter, (4) a Hausa interpreter was set up for the hearing and available, (5) the Claimant participated in fact finding through a Hausa interpreter, by telephone, and (6) the Claimant had supplied a phone number to the agency at fact finding held less than four weeks before the hearing. Under these specific circumstances we think reasonable steps to preserve the Claimant's right to

appear would include at least a phone call to the number Iowa Workforce had already been given. Since an interpreter was already set up Workforce knew of the Claimant's limited English proficiency, and the interpreter would be able to translate the call and any subsequent hearing. The phone number was in the fact finding notes, and these are often consulted by Administrative Law Judge at Workforce. We emphasize that our ruling is limited to the circumstances set out above.

Here the Claimant did not participate in the hearing through no fault of the Claimant. For this reason, the matter will be remanded for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated September 26, 2016 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 Bureau. The administrative law judge shall conduct a new hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights. This decision of the administrative law judge shall be based upon that evidence, including testimony and exhibits, which is admitted in the new hearing, and may not be based on evidence adduced during the first hearing unless that evidence from the first hearing is made part of the record during the second hearing.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/ms