

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

FALISHA L LEWIS

Claimant,

and

UNICCO SERVICE COMPANY

Employer.

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HEARING NUMBER: 09B-UI-05662

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

STATEMENT OF THE CASE:

The issue of timeliness was raised when the claimant filed a hand-delivered appeal on June 16, 2009, 24 days beyond the statutory deadline of May 23, 2009. The reason for the delay was because the claimant never received the Notice of Decision. For this reason, we find good cause has been established for the late appeal, and the board shall consider it to be timely.

FINDINGS OF FACT:

The notice of hearing in this matter was mailed April 10, 2009. The notice set a hearing for May 7, 2009. The claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because the claimant did not receive notice of the hearing (returned as nondeliverable to the agency even though sent to address listed on appeal). She did not know the hearing was taking place.

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 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 claimant did not participate in the hearing through no fault of the claimant. The claimant did not receive the Notice of Hearing in order to participate due to a problem with the delivery of her mail. 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 May 8, 2009 is not vacated. 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.

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would find the claimant's appeal to be untimely and subsequently, affirm decision of the administrative law judge in its entirety.

John A. Peno

AMG/fnv