

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

ARISTEO DIAZ	:	
	:	
Claimant	:	HEARING NUMBER: 20B-UI-08021
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
SUPERIOR STAFFING INC	:	
	:	
Employer	:	

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 and originally scheduled the hearing for August 19, 2020. The Employer requested and was granted a new date because he was unable to be available for that date. A new notice was mailed August 20, 2020, rescheduling the hearing for September 1, 2020 at 10:00 a.m. The Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant could not be available for the new hearing date due to working on the derecho storm damage.

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; he was working to clean-up the derecho storm damage and could not be available for the hearing. We find the Claimant has provided good cause for his nonparticipation. For this reason, the matter will be remanded for another hearing before an administrative law judge so that the Claimant may avail himself of his due process right.

We caution the Claimant that, barring exceptional circumstances, we will not again excuse a failure to call in a number where the Claimant could be reached.

DECISION:

The decision of the administrative law judge dated September 3, 2020 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.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn

AMG/fnv