

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

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**JACK V BAKER**

Claimant,

and

**THE UNIVERSITY OF IOWA**

Employer.

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**HEARING NUMBER: 09B-UI-13478**

**EMPLOYMENT APPEAL BOARD  
DECISION AFTER GRANTED REHEARING**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

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

**DECISION**

**STATEMENT OF THE CASE:**

The claimant filed an application for rehearing on the above-listed matter that was granted based on the fact the claimant provided good cause for his nonparticipation in the hearing. The Board reopened the matter in order to consider the claimant's reason for his nonparticipation. The Board is now ready to issue its decision.

**FINDINGS OF FACT:**

The notice of hearing in this matter was mailed September 15, 2009. The notice set a hearing for October 6, 2009. The claimant contacted the agency to provide a telephone number at which he could be reached. On the day of the hearing, however, the claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because the claimant was undergoing mental problems, which required treatment, i.e., medication and hospitalization. The claimant did not realize the hearing was taking place.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2009) 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 claimant's lack of mental capacity played a key role in the claimant's ability to follow through with the hearing process. His inability to fully appreciate and comprehend the Notice of Hearing affected his ability to respond to its contents, so did he lack the ability to effectively participate in the hearing. His nonparticipation in the hearing was through no fault of the claimant. Although the claimant may have received the Notice of Hearing, it was not meaningful to him. There is no question that due process principles apply in the context of hearings for persons seeking unemployment benefits. Silva v. Employment Appeal Board, 547 N.W.2d 232 (Iowa App. 1996). Two of the benchmarks of due process are adequate notice and meaningful opportunity to be heard. Iowa courts have held that due process requires "the opportunity to be heard at a meaningful time and a meaningful manner." Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

The claimant was not afforded due process rights. Because the Board's decision turns on the procedural issue of due process, we cannot reach the substantive questions in this case. For this reason, we would remand this matter for new hearing before an administrative law judge.

## DECISION:

The decision of the administrative law judge dated October 14, 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.

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John A. Peno

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Elizabeth L. Seiser

