

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

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**MIKEL W KENYON**

Claimant

**HEARING NUMBER: 18BUI-11028**

**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 November 14, 2018. The notice set a hearing for November 28, 2018. The Claimant complied with the notice instructions by providing a telephone number at which he could be reached for the hearing. The Claimant also provided the contact information for three witnesses. On the day of the hearing, the Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant recently started a new job and was unable to answer the phone when the call came.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2015) 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 did not participate in the hearing because he did not answer the call at the number provided due to his recent new employment. The Claimant provided a cogent explanation for his nonparticipation. It is clear from his appeal and prior registration of both his and three witnesses contact information, the Claimant had every intention of following through with the appeal process, but for acting in good faith by being mindful of his attendance. 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 November 28, 2018 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.

The Employment Appeal Board would advise the Claimant to contact the Iowa Workforce Development, Appeals Section, to provide the times he can be available to participate in a hearing.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv