

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

DENNIS L CASTEEL :
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 Claimant, : **HEARING NUMBER: 12B-UI-03377**
 :
 :
 and :
 :
 : **EMPLOYMENT APPEAL BOARD**
 CARGILL MEAT SOLUTIONS CORP : **DECISION AFTER GRANTED REHEARING**
 :
 :
 Employer.

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 issue of timeliness was raised when the Claimant filed an appeal postmarked April 3, 2012, 1 day beyond the statutory deadline of April 2, 2012. The reason for the delay was because the Claimant's attorney of record did not receive the decision until April 3, 2012. For this reason, we find good cause has been established for the late appeal, and the board shall consider it to be timely.

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

A hearing in the above matter was held April 18, 2012 in which the issues to be determined were whether the Claimant's appeal was timely; whether the Claimant was discharged for misconduct; and whether the Claimant voluntarily left for good cause attributable to the Employer; and whether the Claimant was overpaid unemployment benefits. The administrative law judge took testimony on the timeliness of the Claimant's appeal. Only the Claimant and the Employer were mailed claims deputy's decisions, even though the Claimant had his attorney participate during the Fact Finding Interview. The Claimant's attorney did not receive the decision until the Claimant brought it to him, which was one day late, at which the attorney promptly filed an appeal that same day. The administrative law judge took no evidence on the merits of this matter, as he determined the appeal to be untimely.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2011) 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.

The record establishes that the Claimant had an attorney throughout the appeals process who was obviously a party to the informal Fact Finding Interview. And while the claims deputy may not be required to provide the attorney with a copy of his decision, in the interest of fairness, we cannot find that the attorney had proper and timely notice of the Claimant's adverse decision. In order for the attorney to timely respond so that he could avail his client of his due process right, it was necessary for him to receive a copy of that appeal from the agency. Based on this circumstance, we conclude that the Claimant established good cause for the late appeal. For this reason, the Board shall remand this matter for a new hearing and a subsequent decision on the merits.

DECISION:

The administrative law judge's decision dated April 20, 2012 is **REVERSED, and REMANDED** to an administrative law judge in the Unemployment Insurance Appeals Bureau. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision on the merits of the Claimant's separation, which provides the parties appeal rights.

Lastly, the Board would note that according to the Claimant's Fact Finding Interview statements, he returned to work "...as of March 2, 2012, with backpay to the beginning of the suspension..."

Iowa Code section 96.3(8) provides:

8. *Back pay. If an individual receives benefits for a period of unemployment and subsequently receives a payment for the same period from the individual's employer in the form of or in lieu of back pay, the benefits shall be recovered.* The department, in its discretion, may reach an agreement with the individual and the employer to allow the employer to deduct the amount of the benefits from the back pay and remit a sum equal to that amount to the unemployment compensation fund and the balance to the individual, or may recover the amount of the benefits either by having a sum equal to that amount deducted from any future benefits payable to the individual or by having the individual pay

to the department a sum equal to that amount. If an agreement is reached to allow the Employer to deduct the amount of benefits from the back pay and remit that amount to the fund, the department shall not charge that amount to the Employer's account under **section 96.7**. (Emphasis added.)

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv