

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

DAVID R BALL

Claimant,

and

ELECTROLUX HOME PRODUCTS INC

Employer.

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HEARING NUMBER: 10B-UI-10985

**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 August 22, 2010. The notice set a hearing for September 22, 2010 in which the following questions were at issue:

- 1) Whether the claimant was discharged for misconduct;
- 2) Whether the claimant voluntarily left for good cause attributable to the employer;
- 3) Whether the claimant is overpaid.

The claimant did not participate in the hearing. The employer was present and offered testimony that the claimant was laid off due to lack of work from June 15, 2009 until March 16, 2010 when he was recalled back to work via telephone at a number that was no longer working. The employer mailed a registered letter recalling the claimant back to work, however, the claimant never picked up the letter.

The administrative law judge asked the employer if he was willing to waive notice of the issue of work refusal, which the employer agreed. The administrative law judge's decision was issued September 23, 2010, which reversed the claims representative's decision holding that the claimant refused a suitable offer of work, and remanded the overpayment issue. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2009) 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 Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. Since the claimant did not participate in the hearing, the claimant had no notice that the issue of a refusal of suitable work was to be determined, much less had the opportunity to waive said notice. 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).

Had this matter been decided on the claimant's separation, the Board would have had no problem reviewing this case and decided on the merits. However, since a new issue was introduced and the decision was based thereon, the Board must remand this matter for new hearing so as to allow the claimant to avail himself of his due process rights.

DECISION:

The decision of the administrative law judge dated September 23, 2010, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for a new hearing. The administrative law judge shall conduct this limited hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser