

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

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**LOURDES E HERNANDEZ-CASTELLANOS**

Claimant

and

**TYSON FRESH MEATS INC**

Employer

**HEARING NUMBER: 18BUI-10850**

**EMPLOYMENT APPEAL BOARD  
DECISION**

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

**DECISION**

**FINDINGS OF FACT:**

The notice of hearing in this matter was mailed November 5, 2018. The notice set a hearing for November 15, 2018. The Claimant, a non-English speaking person, did not appear for or participate in the hearing. The reason the Claimant did not appear is because she did not provide a telephone number at which she could be reached, and did not receive a call to participate. When she realized she did not receive the call, she made several attempts to contact the agency, but was unsuccessful. She finally spoke to personnel whom she understood told her to continue to wait. No call ever came. By the time she got through to the agency, it was too late.

**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 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 because she had not provided a telephone number for the administrative law judge to call. When she did not receive a call, she contacted the agency and believed in good faith all she needed to do was continue to wait based on her conversation with Workforce personnel. The Claimant has established her intention to follow through with her appeal, but for some miscommunication due to the language barrier, her attempts to partake in the process were thwarted. We find good cause has been established for her nonparticipation and

would remand this matter for another hearing before an administrative law judge so that the Claimant may avail herself of her 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 16, 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.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv