

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

PHOUTHASONE K THIRAVONG

Claimant,

and

CARGILL MEAT SOLUTIONS CORP

Employer.

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HEARING NUMBER: 14B-UI-01511

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

STATEMENT OF THE CASE:

The issue of timeliness was raised when the Claimant filed an appeal that was hand-delivered on May 9, 2014, more than a month and half beyond the statutory deadline of March 19, 2014. The reason for the delay was because the Claimant did not receive the Notice of Decision due to a change of address. For this reason, we find good cause has been established for the late appeal, and the board shall consider it to be timely.

FINDINGS OF FACT:

The Notice of Hearing in this matter was mailed February 13, 2014. The notice set a hearing for March 4, 2014. The Claimant did not appear or participate in the hearing. The reason the Claimant did not appear is because the Claimant does not speak English and did not understand the contents of the Notice of Hearing. The Claimant did not understand that he had to call in his telephone number in order to participate and did not know the hearing was taking place.

REASONING AND CONCLUSIONS OF LAW:

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

The Claimant's lack of English proficiency rendered him unable to understand the contents of the Notice of Hearing, which in turn deprived him of the right to respond to the contents of the Notice and effectively participate in the hearing.

Due process principles 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 a new hearing before an administrative law judge with the assistance of an interpreter who speaks Laotian.

DECISION:

The decision of the administrative law judge dated March 4, 2014 is not vacated. This matter is 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 which provides the parties appeal rights.

Kim D. Schmett

Cloyd (Robby) Robinson

Ashley R. Koopmans

AMG/fnv