

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

RONALD J ZROSTLIK

Claimant

and

BYERLY FOODS INTERNATIONAL

Employer

HEARING NUMBER: 16B-UI-01369

**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, initially on February 10, 2016, setting a hearing for February 24, 2016. A subsequent notice was mailed February 16, 2016, moving the hearing date forward to February 23, 2016. The Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant was confused by the notices and knew a hearing was taking place on the 23rd.

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 through no fault of the Claimant. The Claimant did not participate because the Claimant believed the hearing was scheduled for the 24th when, in fact, it was changed a day earlier (the 23rd). Because the confusion was the result of the agency's issuing two different notices, this matter will be remanded for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated February 24, 2016 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. This decision of the administrative law judge shall be based upon that evidence, including testimony and exhibits, which is admitted in the new hearing, and may not be based on evidence adduced during the first hearing unless that evidence from the first hearing is made part of the record during the second hearing.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv