

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

---

**DANIEL E MCGEE**

Claimant,

and

**A-WYE ELECTRIC INC**

Employer.

:  
:  
:  
:  
:  
:  
:  
:

**HEARING NUMBER: 08B-UI-10926**

**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 November 28, 2007. The notice set a hearing for December 10, 2007. The employer contacted the agency to provide a telephone number at which he could be reached. On the day of the hearing, however, the employer did not appear for or participate in the hearing. The reason the employer did not appear is because the employer's phone line, unbeknownst to him, was malfunctioning and he was unable to receive the call. He did not know the hearing was taking place.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2005) provides:

5. 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 employer did not participate in the hearing through no fault of the employer. The employer complied with the notice instructions establishing his intention to follow through with the appeal, however, due to circumstances beyond his control and for which he was unaware at the time, he could not receive calls. This misfortune precluded him from participating in the call. For this reason, we conclude that good cause was established for his nonparticipation and this matter will be remanded for another hearing before an administrative law judge.

**DECISION:**

The decision of the administrative law judge dated December 18, 2007 is not vacated. 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.

---

Elizabeth L. Seiser

---

Mary Ann Spicer

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the majority decision of the Employment Appeal Board. I would not grant a remand of this matter based on what I consider to be a lack of good cause to do so. Instead, I would make a decision on the merits of the case as the record stands.

---

John A. Peno

AMG/kjo