

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

CHARLOTTE M MARTING

Claimant

and

CVG MONONA WIRE LLC

Employer

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HEARING NUMBER: 20B-UI-09555

**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 September 8, 2020. The notice set a hearing for September 25, 2020 at 9:30 a.m. Another hearing was set for that same day at 10:30 a.m. The Claimant did not appear for or participate in either hearing. The reason the Claimant did not appear is because the Employer told her there was no hearing at 9:30 a.m. since the Employer only received a notice for a 10:30 hearing. The Employer mistakenly believed the hearing must have been rescheduled for 10:30 a.m. Both the Claimant and the Employer together waited for the call that never came. The Claimant did not know that a hearing was still to take place.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2019) 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 was under the impression there was no hearing based on the Employer's honest miscommunication. It is clear the Claimant intended to follow through with the appeal process based on both parties waiting for the phone call for the 'supposed' rescheduled second hearing. Based on these circumstances, the Board finds good cause for the Claimant's nonparticipation. For this reason, the matter will be remanded 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 September 28, 2020 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.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn

AMG/fnv