

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

RICK A TEBBE

Claimant,

and

IOWA FLUID POWER INC

Employer.

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HEARING NUMBER: 08B-UI-09739

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 October 22, 2007. The notice set a hearing for November 5, 2007. The employer via Noel Kehrt, the claimant's supervisor, contacted the agency to provide a telephone number at which he could be reached. He received a control number of #241. Mr. Kehrt subsequently contacted the agency, again, with the telephone number of a witness (Korey Leuenberger) for the employer. On the day of the hearing, Mr. Kehrt did not appear to participate in the hearing. The reason is because the administrative law judge only contacted the witness, Mr. Leuenberger, to participate in the hearing. The employer, Mr. Kehrt 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 (Mr. Kehrt) did not participate in the hearing through no fault of the employer. The employer complied with the notice instructions by providing a telephone number at which he could be reached as well a witness' name and number for his participation. Through some administrative error, however, the employer was not contacted to participate in the hearing, which left only the witness who had limited knowledge of the claimant's separation. Having provided good cause for his nonparticipation, the Board will remand this matter for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated November 5, 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

AMG/ss

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 affirm the administrative law judge's decision in its entirety as the claimant provided unrefuted testimony that the claimant finished his work and left early so as to avoid a confrontation. The employer failed to prove misconduct. Thus, benefits should be allowed provided he is otherwise eligible.

John A. Peno

AMG/ss

