

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
Website: eab.iowa.gov**

TAMARA A FLAIG

Claimant

: **APPEAL NUMBER:** 23B-UI-09483

: **ALJ HEARING NUMBER:** 23A-UI-09483

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**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

The notice of hearing in this matter was mailed October 10, 2023. The notice set a hearing for October 23 at 10:00 a.m. for the reference 03 decision, along with two other decisions that were appealed and scheduled for 10:01 and 10:02 a.m. On October 17, the administrative law judge (ALJ) issued a decision finding that the reference 03 decision had been resolved administratively and dismissed the appeal of that decision. At the end of the dismissal, the ALJ said the October 23 hearing at 10:00 a.m. was cancelled. The Claimant did not appear for or participate in the hearing because she believed the cancellation of the one hearing at 10:00 a.m. also cancelled the hearings at 10:01 and 10:02. The ALJ stated that the Claimant who did not appear or participate in the hearing “defaulted pursuant to Iowa Code section 17A.12(3)...” and the previous decision remained in effect.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2015) provides:

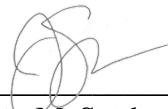
4. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate 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 her own. The Claimant did not participate because she was confused about what was cancelled and what was not cancelled. Another person in the same position could reasonably believe the cancellation of the 10:00 a.m. hearing also canceled the hearings scheduled for 10:01 and 10:02 a.m. Although the administrative law judge entered a default decision based on the Claimant's failure to appear at the hearing, the Board finds that the Claimant provided good cause for her nonparticipation. For this reason, the matter will be remanded for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated October 24, 2023, 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 who shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

When you receive the Notice of Hearing, please read and follow the instructions carefully.



James M. Strohman



Ashley R. Koopmans



Myron R. Linn

SRC/fnv

DATED AND MAILED: DEC 05 2023