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

KISCENA MINTEER Claimant,	: HEARING NUMBER: 08B-UI-06172
and	EMPLOYMENT APPEAL BOARD
TEXAS ROADHOUSE HOLDINGS LLC	DECISION

Employer.

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

The notice of hearing in this matter was mailed July 8, 2008. The notice set a hearing for July 21, 2008. The claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because the claimant experienced problems with her telephone as a result of a storm that caused power shortages in her area. She did not receive the call. When she realized that no call came, she contacted the administrative law judge, but the record had been closed. The claimant did not know that the hearing had taken 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. 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 realize that her phone was not functioning as a result of a storm when she did not receive the call. Once she missed the call, she immediately sought to participate only to find that the record was already closed. The claimant established her intention to follow through with the process, as well as good cause

for why she did not participate. For these reasons, the matter will be remanded for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated July 22, 2008 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.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv