

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

ROBERT L MARTIN

Claimant

and

AABACO HOLDINGS LTD

Employer

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HEARING NUMBER: 18BUI-10283

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The notice of hearing in this matter was mailed October 16, 2018. The notice set a hearing for October 29, 2018. The Employer did not appear for or participate in the hearing. The reason the Employer did not appear is because the Employer did not provide a telephone number at which she could be reached, and she did not receive a call to participate. The Employer contacted the administrative law judge approximately 25 minutes after the scheduled start of the hearing.

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 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 Employer did not participate in the hearing because she had not provided a telephone number for the administrative law judge to call. When the Employer did not receive a call, she contacted the administrative law judge within a reasonable timeframe after the scheduled hearing time, which established her intention to follow through with the appeals process. For this reason, the matter will be remanded for another hearing before an administrative law judge so that the Employer may avail herself of her due process right.

We caution the Employer that, barring exceptional circumstances, we will not again excuse a failure to call in a number where the Employer could be reached.

DECISION:

The decision of the administrative law judge dated October 29, 2018 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.

The Employment Appeal Board would also note that this decision is considered an affirmance of the claims deputy's decision that allowed benefits. As such, the Claimant is subject to the double affirmance rule as follows:

Iowa Code section 96.6(2) (2017) provides, in pertinent part:

...If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5...

871 IAC 23.43(3) provides:

Rule of two affirmances.

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

(3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

In other words, as to the Claimant, should a subsequent decision in this matter disqualify the Claimant for receiving benefits, those benefits already received shall **not** result in an overpayment.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/ss