



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.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

**AMG/ss**