

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

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**ANTONIO J SENA**

Claimant,

and

**ASPLUNDH TREE EXPERT CO**

Employer.

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**HEARING NUMBER: 14B-UI-00874**

**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 January 29, 2014. The notice set a hearing for February 14, 2014. The Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant is a non-English-speaking person who did not receive Notice of Hearing. The Claimant did not know the hearing was taking place.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2011) 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 receive the Notice of Hearing. And even if he had received it, his lack of proficiency in English created a language barrier, and would have affected his ability to respond to its contents, and subsequently his ability to effectively participate in the hearing. His nonparticipation in the hearing was through no fault of the Claimant. There is no question that due process principles apply in the

context of hearings for persons seeking unemployment benefits. Silva v. Employment Appeal Board, 547 N.W.2d 232 (Iowa App. 1996). Two of the benchmarks of due process are adequate notice and meaningful opportunity to be heard. Iowa courts have held that due process requires "the opportunity to be heard at a meaningful time and a meaningful manner." Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

The Claimant was not afforded due process rights. The Claimant was precluded from fully participating in the hearing before the administrative law judge because he not only did not receive the notice, it would have also not been "meaningful" to him due to the language barrier. Because the Board's decision turns on the procedural issue of due process, we cannot reach the substantive questions in this case. For this reason, we would remand this matter for new hearing before an administrative law judge.

**DECISION:**

The decision of the administrative law judge dated February 14, 2014 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau. 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.

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Monique F. Kuester

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Cloyd (Robby) Robinson

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