

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

DANIEL S MILLER

Claimant

and

WALMART STORES INC

Employer

HEARING NUMBER: 19BUI-02640

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

DECISION

STATEMENT OF THE CASE:

The issue of timeliness was raised when the Employer filed an appeal postmarked May 14, 2019, twelve days beyond the statutory deadline of May 2, 2019. The reason for the delay was because the Employer did not receive the Notice of Decision due to an incorrectly addressed envelop. For this reason, we find good cause has been established for the late appeal, and the board shall consider it to be timely.

FINDINGS OF FACT:

The notice of hearing in this matter was mailed April 1, 2019. The notice set a hearing for April 16, 2019. The Employer did not appear for or participate in the hearing. The reason the Employer did not appear is because the Notice of Hearing was addressed incorrectly (should be Prairie du Chein, *Wisconsin*) and the Employer did not receive it. The Employer did not know the hearing was taking place.

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 Employer did not participate in the hearing through no fault of the Employer. The Employer did not participate because she did not receive the Notice of Hearing due to an error in the mailing address, which caused her to be unaware of the hearing was taking place. 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 April 17, 2019 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.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv