

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

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MARK A TUCHEK	:	
	:	
Claimant,	:	HEARING NUMBER: 09B-UI-00206
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
MISSISSIPPI WELDERS SUPPLY CO INC	:	
	:	
Employer.	:	

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 10A.601 Employment Appeal Board Review

**DECISION**

**STATEMENT OF THE CASE:**

The issue of timeliness was raised when the claimant filed an appeal postmarked February 28, 2009, 23 beyond the statutory deadline of February 5, 2009. The reason for the delay was because the claimant never received the Notice of Decision. 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 January 8, 2009. The notice set a hearing for January 21, 2009. The claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because the claimant did not receive notice of the hearing and did not know the hearing was taking 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 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 participate in the hearing through no fault of the claimant. The claimant did not receive the Notice of Hearing in order to participate. 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 January 21, 2009 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.

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John A. Peno

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Elizabeth L. Seiser

AMG/fnv

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would find the claimant's appeal to be untimely, and consequently affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

AMG/fnv