

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

ANTONIA I HERNANDEZ

Claimant,

and

CON AGRA

Employer.

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HEARING NUMBER: 10B-UI-14764

EMPLOYMENT APPEAL BOARD
DECISION

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The notice of hearing in this matter was mailed October 20, 2009. The notice set a hearing for November 5, 2009. The employer contacted the agency to provide a telephone at which he could be reached for the hearing. On the day of the hearing, however, the employer did not appear for or participate in the hearing. The reason the employer did not appear is because the administrative law judge was having difficulties with her phone when trying to contact both parties for the hearing. Eventually, the administrative law judge was able to contact the claimant and proceeded with the hearing. The employer did not know the hearing was taking place.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2009) 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. He complied with the notice instructions, but was precluded from participating in the hearing due to technical difficulties the administrative law judge had with her telephone. We conclude that the employer provided good cause for his nonparticipation and would remand this matter for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated November 12, 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.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/ss