

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

RAY HENDLEY

Claimant,

and

EMERALD GREEN LAWNCARE INC

Employer.

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HEARING NUMBER: 10B-UI-04658

**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 April 6, 2010. The notice set a hearing for May 11, 2010 in which the issues of 1) whether the claimant is able and available for work; 2) whether the claimant refused to accept suitable work; and 3) whether the claimant is overpaid were to be determined.

The claimant did not participate in the hearing, but the employer was available and the hearing proceeded. During the hearing, the subject of whether the claimant was separated from employment came up. (Tr. 3) The administrative law judge noted that the separation issue was not included in the Notice of Hearing and subsequently asked the employer, "You don't mind waiving notice," to which the employer agreed to waive notice. The administrative law judge's decision was issued May 12, 2010 that determined the "...claimant voluntarily left work without good cause attributable to the employer. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2009) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an 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.

The record shows that the claimant did not participate in the hearing to provide any evidence on his behalf. While the reason is unknown as to his failure to participate, we note that one thing is for sure, he certainly had no prior notice that a separation issue was to be determined. Thus, he had no opportunity to 1) agree to the waiver; 2) request a postponement; or 3) object to the waiver. 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).

Here, the claimant was not afforded due process rights. 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 May 12, 2010 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for the issuance of a Notice of Hearing that includes all issues to be determined and conduct further development of the record following said notice. The administrative law judge shall then issue a decision which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

AMG/fnv