

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

JACOB D HOLDEN

Claimant,

and

ABSOLUTELY DRY BASEMENT

Employer.

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HEARING NUMBER: 10B-UI-08520

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The notice of hearing in this matter was mailed June 29, 2010. The notice set a hearing for August 2, 2010. On the day of the hearing, the administrative law judge contacted the employer by phone and after receiving no answer, left a voice message for the employer to call the 800 # by 9:10 a.m. The employer received the voicemail at approximately 9:06 a.m. and immediately tried to contact the administrative law judge. He received a busy signal and attempted to contact the administrative law judge three additional times, but received the same response. By the time he finally got through the line, he was told that her Instant Messaging was not working and that the administrative law judge would call him back, which never happened.

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. The employer was unable to return the administrative law judge's call within a timely manner because he was unable to get through the line. Having established good cause for his nonparticipation, this matter will be remanded for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated August 3, 2010 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

Monique F. Kuester

Elizabeth L. Seiser

AMG/kjo