

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

MARIAN E CARBALLO ESCOBAR

Claimant,

and

**PRAIRIE MEADOWS RACETRACK &
CASINO**

Employer.

HEARING NUMBER: 13B-UI-07231

**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 June 24, 2013. The notice set a hearing for July 23, 2013. The Claimant is a non-English-speaking person who made contact with the agency on July 7, 2013 to provide a telephone and request an interpreter to assist her in her participation of the hearing. On the day of the hearing, however, 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 the call to participate. She called the number on the notice, but was disconnected. When she attempted the second time to call, agency personnel responded, "No Spanish," and her call did not get connected.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2011) 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 Claimant's lack of proficiency in English created a language barrier, which played a key role in the claimant's ability to follow through with the hearing process. Her inability to personally understand the Notice of Hearing affected her ability to respond to its contents, so did she lack the ability to effectively participate in the hearing. Her nonparticipation in the hearing was through no fault of the Claimant. Although the Claimant may have received the Notice of Hearing, it was not completely meaningful to her. 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).

The Claimant was not afforded due process rights. The Claimant was precluded from fully participating in the hearing before the administrative law judge because the notice was not completely "meaningful" when she received it and required further time and effort on her part to gain its meaning. While the claimant was literally provided notice and the subsequent decision, these documents had no meaningful effect such that she could completely follow through with its instructions. Thus, the notice did not give the claimant an opportunity to be heard at a meaningful time and in a meaningful manner. And her failure to understand the Notice of Decision due to the language barrier, surely affected her ability to adequately respond.

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 July 24, 2013 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau. 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

fnv

Cloyd (Robby) Robinson