

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

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**DANIEL E DRISCOLL**

Claimant,

and

**LEAZENBY CONSTRUCTION INC**

Employer.

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**HEARING NUMBER: 11B-UI-00567**

**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 February 7, 2011. The notice set a hearing for February 16, 2011. The claimant contacted the agency to provide a telephone number at which she could be contacted to participate in the hearing. On the day of the hearing, the claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because the administrative law judge called the number provided and initially received a recording, which indicated there was a block on the number with instructions on how the caller could continue the call. The administrative law judge did not follow-through with the call and the claimant did not know that 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 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.

Here the claimant did not participate in the hearing through no fault of the claimant. The claimant complied with the notice instructions, but was not properly called to participate. Although the claimant's number had a block on it, the recording provided instruction on how to follow through with the call. Since the administrative law judge did not follow through with the instructions, his call did not go through and the claimant was effectively precluded from participating in the hearing, which was a denial of due process. Having established good cause for claimant's nonparticipation, the Board shall remand this matter for another hearing before an administrative law judge.

**DECISION:**

The decision of the administrative law judge dated March 10, 2011 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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Monique F. Kuester

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Elizabeth L. Seiser

AMG/fnv