

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building, 4<sup>TH</sup> Floor  
Des Moines, Iowa 50319  
eab.iowa.gov**

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**KOFI KPOVI**

Claimant

: **APPEAL NUMBER:** 22B-UI-16590

: **ALJ HEARING NUMBER:** 22R-UI-16590

:

and

:

**EMPLOYMENT APPEAL BOARD  
DECISION**

:

**TYSON FRESH MEATS INC**

:

:

Employer

:

**SECTION:** 10A.601 Employment Appeal Board Review

**DECISION**

**FINDINGS OF FACT:**

The notice of hearing in this matter was mailed September 16, 2022. The notice set a hearing for September 27, 2022. The Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant contacted the administrative law judge at 1:15 p.m. according to Clear2There, but for some reason, the administrative law judge did not receive the call. The Claimant is a non-English-speaking individual in need of an interpreter for the French language.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2019) 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 because he contacted the administrative law judge 15 minutes after the start of the hearing. He was unable to gain access to the system. We find the Claimant contacted the administrative law judge within a reasonable timeframe after the scheduled hearing time, which established his intention to follow through with the appeals process. For this reason, the matter will be remanded for another hearing before an administrative law judge so that the Claimant may avail himself of his due process right.

We caution the Claimant that, barring exceptional circumstances, we will not again excuse a failure to call in a number where the Claimant could be reached.

**DECISION:**

The decision of the administrative law judge dated October 7, 2022 is not vacated and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to an administrative law judge who shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

Please note the way you appear at the hearing has changed. When you receive the Notice of Hearing, please read and follow the instructions carefully.

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James M. Strohman

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Myron R. Linn

AMG/fnv