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

	:
LORI HEATH	:
	: HEARING NUMBER: 08B-UI-10808
Claimant,	:
	:
and	: EMPLOYMENT APPEAL BOARD
	: DECISION
SHIVAM MOTEL INC	:

Employer.

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

The notice of hearing in this matter was mailed November 18, 2008. The notice set a hearing for December 4, 2008. Neither party participated in the hearing. The claimant contacted the agency a few minutes prior to the start of the hearing, and was placed on hold. In the meantime, the employer was contacted, but was told that the agency was waiting for the claimant to return the administrative law judge's call. The agency indicated that the employer would be called back in 10-15 minutes, but the call never came. The claimant contacted the agency, again, a few minutes after the closing of the record.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) provides:

5. 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. 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 parties did not participate through some mishap in miscommunication between the claimant and the agency. Although the claimant attempted to participate, her effort was inadvertently thwarted. The employer was not re-contacted once the claimant failed to timely return the call. Because both parties established their intention to follow-through with the appeals process, (but for the delay in follow-up)

this matter shall be remanded for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated December 5, 2008 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

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv