

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

BRUCE W MCRAE

Claimant,

and

**MILLER & SONSTRACOR SERVICE
INC**

Employer.

HEARING NUMBER: 08B-UI-03745

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 April 18, 2008. The notice set a hearing for May 1, 2008. The claimant contacted the agency to provide a telephone number at which he could be reached. 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 unbeknownst to him at the time, his phone service was not functioning and he couldn't receive the administrative law judge's call. The claimant did not know the hearing was taking place.

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 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 by providing a telephone number, which the administrative law judge's decision finds to the contrary. The claimant provided documentation to support that his phone service was down to explain why the administrative law judge's call was not received. Having provided good cause for his nonparticipation, the Board shall remand this matter for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated May 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