

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

MIAN Y TONG

Claimant,

and

SWIFT & COMPANY

Employer.

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HEARING NUMBER: 09B-UI-06188

**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 21, 2009. The notice set a hearing for May 18, 2009. The claimant, whose has limited proficiency in English, did not appear for or participate in the hearing. The reason the claimant did not appear is because the claimant did not understand the notice instructions to call in and provide a telephone number. Instead, the claimant came to the Iowa Workforce Development Center at approximately 3:45 p.m. waiting to be called in to participate. He did not know the hearing was taking place by telephone.

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 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. His inability to personally

understand the Notice of Hearing affected his ability to respond to its contents, so did he lack the ability to effectively

participate in the hearing. His nonparticipation in the hearing was through no fault of the claimant. Although the claimant may have received the Notice of Hearing, it was not meaningful to him. 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 "meaningful" when he received it and required further time and effort on his part to gain its meaning. While the claimant was literally provided notice and the subsequent decision, these documents had no meaningful effect such that he could timely comply either documents' instructions. Thus, the notice did not give the claimant an opportunity to be heard at a meaningful time and in a meaningful manner. And his failure to understand the Notice of Decision due to the language barrier, surely affected his ability to timely 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 May 20, 2009 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