

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

VIET Q NGUYEN	:	
Claimant	:	HEARING NUMBER: 21B-UI-11660
and	:	
TYSON FRESH MEATS INC	:	EMPLOYMENT APPEAL BOARD DECISION
Employer	:	

SECTION: 10A.601 Employment Appeal Board Review

DECISION

STATEMENT OF THE CASE:

The issue of timeliness was raised when the Claimant’s wife filed a faxed appeal on August 13, 2021, one week beyond the statutory deadline of August 6, 2021. The reason for the delay was because her husband, the Claimant, had recently passed away. She was unable to timely manage his affairs. For this reason, we find good cause has been established for the late appeal, and the board shall consider it to be timely.

FINDINGS OF FACT:

The notice of hearing in this matter was mailed June 16, 2021. The notice set a hearing for July 14, 2021. The Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant passed away on July 4, 2021, and his wife did not know there was a hearing scheduled for that date.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2021) 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.

871 IAC 25.14(1) provides, in relevant part:

Benefits due deceased claimants. An eligible week for a deceased claimant will be one where the week is claimed by the individual prior to death. If benefits are due a deceased person, the benefits shall be paid to the person or persons who have been issued letters testamentary or of administration pursuant to an application filed within 30 days after the claimant's death.

In addition, 871 IAC 25.14(4) provides:

Any person claiming entitlement to the payment of benefits under this regulation shall present said claim in writing within 60 days after the death of the claimant and shall offer proof thereof in such form as the department may require; however, the department may, upon good cause shown, extend the time for presentation of said claim. In the event no claim is made for the payment of such benefits within the time limit specified above or any extension thereof, the benefits shall not be paid but shall remain in the unemployment compensation fund.

Here the Claimant did not participate in the hearing through no fault of the Claimant. The Claimant did not participate because he passed away prior to the hearing. His wife, who is appealing on his behalf, did not know that a hearing was to take place. For this reason, the matter will be remanded for another hearing before an administrative law judge so that the Claimant's wife may avail herself of her husband's due process right in accordance with the aforementioned administrative rule.

DECISION:

The decision of the administrative law judge dated July 22, 2021 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 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.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn