

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

KARY L WINEBRENNER

Claimant,

and

ADVANCE SERVICES INC

Employer.

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HEARING NUMBER: 11B-UI-01537

**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 February 18, 2011. The notice set a hearing for March 8, 2011. The claimant contacted the agency to provide a telephone number at which he could be reached for the hearing. On the day of the hearing, the claimant did not participate. The reason the claimant did not appear is because the claimant was not available at the number provided when the administrative law judge made the call.

At approximately 2:06 p.m. on the day of the hearing, the claimant called the 1-800 number listed on the notice to gain access to the proceeding, but did not get through. The claimant did not know that the hearing was taking place.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2009) provides:

4. 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 did not participate in the hearing through no fault of the claimant. The claimant complied with the notice instructions by providing a number where he could be reached. Although he was not immediately available to participate, phone records submitted on appeal to establish that he contacted the agency shortly after the start of the hearing. For some unknown reason, the agency was not aware of this call. The claimant called back within a reasonable time to follow through with the process. Due to circumstances obviously beyond his control, he was denied his due process right. Having established 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 March 11, 2011 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

Monique F. Kuester

AMG/fnv