

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

DARLA J MILLER

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 09B-UI-09618

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The notice of hearing in this matter was mailed July 8, 2009. The notice set a hearing for July 21, 2009. The claimant contacted the agency to request a rescheduling because she knew ahead of time that she would be traveling on July 8th. The agency told her "... they could do the hearing from any location as long as [she] had a cell phone available..." (Claimant's Appeal Letter) The claimant provided the cell phone number and was called at that number on the day of the hearing.

During the hearing, however, the claimant lost her cell phone connection prior to giving testimony to support her case. She immediately called the administrative law judge back within approximately three minutes, but was told the record had closed and she could not present any testimony.

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.

Although the Notice of Hearing informs the parties "... [i]f possible, avoid using a cell phone to prevent transmission and battery problems..." the claimant was advised that she could use her cell when she attempted to get a postponement due to her need to travel on the hearing date. Had the claimant been allowed to postpone or reschedule the hearing, we can reasonably assume she would have had access to a landline and the disconnection would have unlikely occurred. For the administrative law judge to deny her the opportunity to present testimony was tantamount to a denial of due process under the circumstances.

Ms. Davis had already substantially complied with the notice instructions by providing a number at which she could be reached. On the day of the hearing, she was available at that number and had already participated for the duration of the employer's putting on its case. Once she became disconnected, the administrative law judge made no effort to contact the claimant and immediately closed the record. When the claimant successfully reconnected just minutes after the record had been closed, the administrative law judge did not reopen the matter so as to allow her to present her case. We conclude that the claimant established good cause for her inability to follow through with the hearing at the point she was disconnected. For this reason, this matter will be remanded for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated July 22, 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/ss