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

DOROTHY J TECH	:
Claimant,	HEARING NUMBER: 08B-UI-04076
and	EMPLOYMENT APPEAL BOARD
MONGOOSE INC	DECISION

Employer.

SECTION: 871 IAC 26.8(5)

DECISION

The claimant SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The notice of hearing in this matter was mailed April 29, 2008. The notice set a hearing for May 12, 2008. The claimant contacted the agency to provide a telephone number where she could be reached. An automated message system responded to her call at which time she left a message for the administrative law judge. On the day of the hearing, the claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because the administrative law judge did not contact her and she 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 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.

Page 2 08B-UI-04076

Here the claimant did not participate in the hearing through no fault of the claimant. The claimant followed the notice instructions by providing a telephone number at which she could participate; however, for some unknown reason, the administrative law judge did not call the number she left on the automated system. For this reason, the matter will be remanded for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated May 14, 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

AMG/ss

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would not remand this matter based on what I consider to be a lack of good cause to do so.

Monique F. Kuester

AMG/ss