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

LAKEESHA S PATTON Claimant,	HEARING NUMBER: 09B-UI-12311
and	EMPLOYMENT APPEAL BOARD
SDH SERVICES WEST LLC	: DECISION

Employer.

SECTION: 10A.601 Employment Appeal Board Review

# DECISION

## FINDINGS OF FACT:

A hearing in the above matter was held May 9, 2009. The administrative law judge's decision was issued September 15, 2009. The administrative law judge's decision has been appealed to the Employment Appeal Board. That decision determined that the claimant who did not appear or participate in the hearing "defaulted pursuant to Iowa Code section 17A.12(3)…" and the previous decision remained in effect. The employer participated, but no evidence was taken.

## 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 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. 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.

The administrative law judge's decision does indicate that the employer was available to testify at the hearing. However, the record contains no evidence to review upon which the Board can base a decision. In addition, the agency entered a default ruling for which it had no authority. 871 IAC 26.14(9) provides,

in relevant part, that "... a party's failure to participate in a contested case hearing *shall not* result in a decision

automatically being entered against it." Had evidence been taken and a decision issued based thereon, the Board would be able to proceed with the appeal. That not being the case, the Board must remand this matter for a new hearing.

#### DECISION:

The decision of the administrative law judge dated August 19, 2009 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then 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