

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

OSMIC ESAD

Claimant,

and

BEEF PRODUCTS INC

Employer.

:
:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 09B-UI-03300

**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 March 3, 2009. The notice set a hearing for March 26, 2009. The claimant contacted the agency to provide a telephone at which he could be reached for the hearing. 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 when the administrative law judge tried to call him, the call went directly into voicemail. The claimant almost instantly called the administrative law judge back to confirm that he was available at the number provided. However, when the administrative law judge tried the number, again, the same result. The hearing continued without the claimant. The claimant did call in after the record was closed.

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.

Here the claimant did not participate in the hearing through no fault of the claimant. For some reason, the administrative law judge's calls went directly into the claimant's voicemail, which prevented direct contact with the claimant. It is clear that the claimant had every intention of following through with the appeal process, but for this mishap with the phone. Based on these circumstances, we find good cause for his lack of participation and would remand this matter be for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated March 26, 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