

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

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**DANIEL AVERY**

Claimant,

and

**LABOR READY MIDWEST INC**

Employer.

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**HEARING NUMBER: 11B-UI-04469**

**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 April 19, 2011. The notice set a hearing for May 2, 2011. The employer's representative (TALX) contacted the agency to provide a telephone number at which she could be contacted to participate in the hearing and received a control #293. On the day of the hearing, the representative did not appear for or participate in the hearing. The reason the representative did not appear is because administrative law judge called the number provided and initially received a recording. The recording indicated there was a block on the number with instructions that the caller must enter his 10-digit number to continue. The administrative law judge did not follow-through with the call and the employer's representative did not know that the hearing was taking place.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2011) 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 employer representative did not participate in the hearing through no fault of the employer. The employer's representative complied with the notice instructions, but was not properly called to participate. Although the representative's number had a block on it, the only step the administrative law judge had to do was enter his 10-digit number to follow through with the call, as the employer's representative was available to accept it. Having established good cause for her non-participation, the Board shall remand this matter for another hearing before an administrative law judge.

**DECISION:**

The decision of the administrative law judge dated May 3, 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.

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John A. Peno

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Elizabeth L. Seiser

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