

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

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JOE P TAYLOR

Claimant,

and

MANPOWER INTERNATIONAL INC

Employer.

HEARING NUMBER: 09B-UI-00185

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 February 5, 2009. The notice set a hearing for February 20, 2009. The claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because when he contacted the agency at 8:30 a.m. to participate, he was told, initially by Sandy and later by the Judge, that he failed to read the instructions. The record had already been 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 because he, initially, did not follow the instructions. However, he did call the agency to participate at the start of the hearing, which demonstrates his intention to follow through with the appeals process. His denial of access to the hearing, in light of his call that came within a reasonable time of the start of the hearing, is tantamount to a denial of due process. 871 IAC 24.14(7) provides, "If a party responds to the hearing notice while the hearing is in

progress, the presiding officer shall pause and admit the party... and resume the hearing.” For this reason, the matter will be remanded for another hearing before an administrative law judge.

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**DECISION:**

The decision of the administrative law judge dated February 23, 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.

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John A. Peno

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Elizabeth L. Seiser

AMG/ss

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board that this matter should be remanded. Rather, I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

AMG/ss