

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

JAMES M PENISTON

Claimant,

and

MUSCATINE USED PARTS INC

Employer.

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HEARING NUMBER: 09B-UI-11525

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The notice of hearing in this matter was mailed August 14, 2009. The notice set a hearing for August 26, 2009. The employer contacted the agency to provide a telephone number at which he could be reached for the hearing. On the day of the hearing, however, the employer did not appear for or participate in the hearing. The reason the employer did not appear is because a storm came through and took out his land line. He was unable to participate and did not know that the hearing was still 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.

Here the employer did not participate in the hearing through no fault of the employer. The employer complied with the notice instructions, but was precluded from participating due to circumstances beyond his control (act of God). 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 August 27, 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