

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

LINDA T KRAFT

Claimant,

and

BETHANY HOME

Employer.

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HEARING NUMBER: 10B-UI-04000

**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 originally mailed on June 21, 2010. The notice set a hearing for July 21, 2010. The employer immediately contacted the agency to request a postponement and was told it was denied. However, the employer then received a new notice of hearing that was mailed on July 1, 2010, setting the hearing for July 22, 2010. The claimant did not appear on the originally scheduled date and did not know that a hearing was still taking place. The employer received a “corrected notice” returning the hearing to its original date.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2009) 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 did not participate in the hearing through no fault of the employer. The employer requested a postponement that was denied, however, the agency appeared to have granted it based on the subsequent notice that set the hearing for a new date. When the employer received a corrected notice returning to the original hearing date, he was told the postponement was denied. Due to the confusion, he

was unable to participate on the scheduled date believing it had, in fact, been postponed. Having provided good cause for the employer's nonparticipation, this matter will be remanded for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated July 28, 2010 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.

Monique F. Kuester

Elizabeth L. Seiser

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would not remand this matter based on what I consider to be a lack of good cause to do so. The employer admitted she understood that her postponement request was denied. Thus, it was her responsibility to be available based on the agency's verbal response and the 'corrected notice'.

John A. Peno

RRA/kk