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

CHRISTINE E DAVIS	
Claimant	: HEARING NUMBER: 18BUI-07284
and	EMPLOYMENT APPEAL BOARD
PROGRESS INDUSTRIES	
Employer	

SECTION: 10A.601 Employment Appeal Board Review

DECISION

STATEMENT OF THE CASE:

The issue of timeliness was raised when the Claimant filed an appeal postmarked August 23, 2018, 13 days beyond the statutory deadline of August 10, 2018. The reason for the delay was because the Claimant had originally appealed on August 6, 2018, but the letter was addressed to the Iowa Workforce Development, Appeals Section, as a request to reopen the record. For this reason, we find good cause has been established for the late appeal, and the board shall consider it to be timely.

FINDINGS OF FACT:

The notice of hearing in this matter was mailed July 26, 2018. The notice set a hearing for August 10, 2018. The Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant learned just two days prior to the hearing about a second interview for a potential employment opportunity for which there was no other interview time available. She immediately contacted the agency who advised her to put her postponement request in writing. She promptly e-mailed the agency with her request, and did not receive a response. The Claimant did not know the hearing was still taking place.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2015) 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.

871 IAC 26.8(2) provides:

A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of extreme emergency.

Here the Claimant did not participate in the hearing through no fault of the Claimant. The Claimant did not participate because she would not be available on the original hearing date due to a second job interview she learned about just two days prior to the hearing. The Claimant complied with the agency's directive to put her request in writing, which she immediately did via e-mail. Based on these circumstances, we find the Claimant substantially complied with the administrative rule and has established good cause for her nonparticipation. 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 23, 2018 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau. 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.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv