

**BEFORE THE
EMPLOYMENT APPEAL BOARD
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Website: eab.iowa.gov**

ABIGAIL E SMITH

Claimant

and

IWD INTEGRITY BUREAU

: **APPEAL NUMBER:** 24B-UI-10137

: **ALJ HEARING NUMBER:** 23A-UI-10137

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: **EMPLOYMENT APPEAL BOARD
DECISION**

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SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

The notice of hearing in this matter was mailed October 30, 2023. The notice set a hearing for November 14, 2023. The Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant did not receive notice of the hearing and did not know the hearing was taking place. The Claimant has chronic issues with her mail as her physical and her mailing address are in different zip codes. This often can result in delayed mail.

REASONING AND CONCLUSIONS OF LAW:

The issue of timeliness was raised on appeal when the Claimant filed his appeal beyond the deadline. The Board finds good cause for the untimely appeal, and considers it as timely.

Iowa Code section 10A.601(4) (2024) 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.

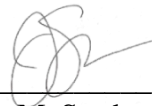
Here the Claimant did not participate in the hearing through no fault of the Claimant. The Claimant did not receive the Notice of Hearing in order to participate. For this reason, the matter will be remanded for another hearing before an administrative law judge.

We caution the Claimant that she is aware of her mailing problems and we now expect her to take the initiative to assure she knows when a hearing is scheduled. This may mean calling the agency if the Claimant does not hear from them within a couple weeks of today's decision. Similarly, once the Claimant has a hearing then at the end of that hearing the Administrative Law Judge will give an indication of when to expect a decision. If the Claimant does not hear from the Administrative Law Judge within that timeframe she should inquire about the status with the agency. Again, the Claimant is aware of her mail issues and thus she needs to be active in assuring her timely participation in this process.

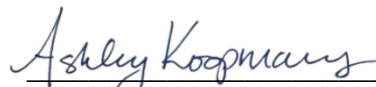
DECISION:

The decision of the administrative law judge dated November 15, 2023 is not vacated and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to an administrative law judge. 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.

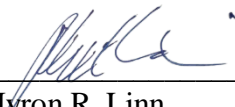
It is recommended that in addition to mailing the hearing notice to the Claimant that the division email a copy of the notice to the Claimant at the email supplied by her in her appeal to the Administrative Law Judge. Similar action with the decision of the Administrative Law Judge is also advisable.



James M. Strohman



Ashley R. Koopmans



Myron R. Linn

RRA/fnv

DATED AND MAILED: FEBRUARY 29 2024