

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

ERENDIRA CARILLO

Claimant,

and

SWIFT PORK COMPANY

Employer.

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HEARING NUMBER: 11B-UI-08385

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

A hearing in the above matter was held July 19, 2011 in which the issues to be determined were whether the Claimant was discharged for misconduct; and whether the Claimant voluntarily left for good cause attributable to the employer. During the hearing, the parties were cut off from communication with the administrative law judge. The administrative law judge believed the Claimant was on a cell phone in a car that drove out of range. (Tr. unnumbered p. 1) The administrative law judge did not call the Claimant back, but called the employer back and proceeded with the hearing until its conclusion. (Tr. unnumbered p. 1-2)

The Claimant attempted to gain access to the hearing by calling from a friend's home less than 10 minutes after the start of the hearing, but was told the hearing concluded. She did not get to present any evidence of her case. The administrative law judge's decision was issued July 20, 2011, which denied the Claimant unemployment benefits. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2011) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an 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.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. Since both parties were disconnected from the hearing, it was incumbent upon the administrative law judge to contact *both* parties in order to have a fair hearing. The fact that the Claimant was on a cell phone that lost service should in no way mitigate her right to have due process, particularly when the opposing party was recalled.

The Claimant lost service through no fault of her own. Her quick effort to regain access to the proceeding was thwarted since the hearing ended less than 10 minutes after the hearing started. If the administrative law judge would have tried to call her back, and no answer, this case have been decided differently. However, be that as it may, the Claimant has provided good cause for her nonparticipation. For this reason, the Board shall remand this matter for a new hearing so as to avail the Claimant of her due process right.

DECISION:

The decision of the administrative law judge dated July 20, 2011 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

AMG/fnv