

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

CECIL M DENNEY

Claimant

: **APPEAL NUMBER:** 24B-UI-12143

: **ALJ HEARING NUMBER:** 23A-UI-12143

:

and

:

**EMPLOYMENT APPEAL BOARD
DECISION**

:

CENTRAL IOWA READY MIX INC

:

:

Employer

:

SECTION: 10A.601 Employment Appeal Board Review

DECISION

FINDINGS OF FACT:

The notice of hearing in this matter was mailed January 2, 2024. The notice set a hearing for January 16. The Claimant did not appear for or participate in the hearing because they did not receive the notice of hearing and did not know the hearing was taking place. The administrative law judge’s decision determined that the Claimant, who did not appear or participate in the hearing, “defaulted pursuant to Iowa Code section 17A.12(3)...” and the previous decision remained in effect.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2023) 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.

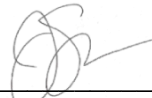
Here, the Claimant did not participate in the hearing through no fault of the their own. The Claimant did not participate because they did not receive notice of the hearing. Although the administrative law judge entered a default decision based on the Claimant’s failure to appear at the hearing, the Board finds that they have provided good cause for their 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 January 17, 2024, 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 who shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

When you receive the Notice of Hearing, please read and follow the instructions carefully.

Note to the Claimant: We will not remand the case for this issue again. If you do not receive a notice of hearing from the appeals bureau within ten days of this decision, you should contact them to get more information regarding your new hearing.



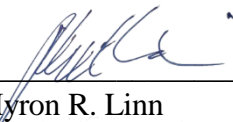
James M. Strohman



Ashley R. Koopmans

DISSENTING OPINION OF MYRON R. LINN:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would affirm the decision of the administrative law judge since I do not find the Claimant's claim of nonreceipt to be credible.



Myron R. Linn

RRA/fnv

DATED AND MAILED: FEB 21 2024