

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

KEVIN B JENSEN

Claimant,

and

THE UNIVERSITY OF IOWA

Employer.

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HEARING NUMBER: 11B-UI-17385

**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 mailed January 10, 2011. The notice set a hearing for January 31, 2011. The claimant did not contact the agency to provide a number where he could be reached for the hearing. On the day of the hearing, however, when he did not receive the call, he contacted the administrative law judge within five minutes after the start of the hearing, but his call was not put through and he was not allowed to participate.

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 claimant did not participate in the hearing through no fault of the claimant. Although he did not specifically follow the notice instructions, he contacted the agency within a reasonable amount of time (10:05 a.m.) to participate for the 10:00 a.m. hearing. For some reason, he was not allowed to follow through with his appeal. Having established good cause for his nonparticipation, we shall remand this matter for another hearing before an administrative law judge.

DECISION:

The decision of the administrative law judge dated February 11, 2011 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.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/fnv