

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

JASON SARNOLD

Claimant,

and

**ANNETT HOLDINGS INC/TMC
TRANSPORTATION**

Employer.

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HEARING NUMBER: 09B-UI-13723

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The notice of hearing in this matter was mailed September 21, 2009. The notice set a hearing for October 12, 2009. The claimant did not appear for or participate in the hearing. The reason the claimant did not appear is because he, originally, went to the Iowa Workforce Development Center to seek help to follow through with his appeal. He was instructed that "he was all set and that [he] would just have to be available on the date of the hearing..." The claimant waited for the call, but the call never came. He did not know the hearing was taking place.

The administrative law judge's decision was issued October 12, 2009, which was appealed to the Employment Appeal Board. That 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) (2005) 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.

Page 2
09B-UI-13723

Here the claimant did not participate in the hearing through no fault of the claimant. The claimant did receive the Notice of Hearing, but required additional assistance to follow through with the process. He was, inadvertently, given incorrect advice from the local office that effectively precluded him participating in the hearing. For this reason, the matter will be remanded for another hearing before an administrative law judge.

In addition, the agency entered a default ruling for which it had no authority. 871 IAC 26.14(9) provides, in relevant part, that "... a party's failure to participate in a contested case hearing *shall not* result in a decision automatically being entered against it."

DECISION:

The decision of the administrative law judge dated October 13, 2009 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

AMG/ss

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/ss