

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

DENISE D MCFALLS

Claimant

and

DOLGENCORP LLC

Employer

HEARING NUMBER: 19BUI-00987

**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 February 8, 2019. The notice set a hearing for February 19, 2019. The Employer contacted the agency to provide a telephone number, which the agency called, and the Employer answered on the day of the hearing. The administrative law judge, however, was unable to contact the Claimant, initially, and informed the Employer she would call the Employer back once she got in touch with the Claimant. The Employer never received the second call to participate.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2015) 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 Employer did not participate in the hearing because he did not receive the second call to participate as expected. The Employer complied with the notice instructions by providing a number where he could be reached, which he answered at the first call pending contact of the Claimant. However, the Employer did not receive the second call and did not know the hearing had proceeded without him. The Employer has established his intention to follow through with the appeal process. We conclude good cause has been shown for why he didn't participate in the hearing. For this reason, the matter will be remanded for another hearing before an administrative law judge so that the

Employer may avail himself of his due process right.

DECISION:

The decision of the administrative law judge dated February 20, 2019 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 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.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv