

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

SHEILA L PORREZ :

Claimant :

and :

C & S PRODUCTS CO INC :

Employer :

HEARING NUMBER: 15B-UI-12688

**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 December 15, 2014. The notice set a hearing for March 18, 2015. The Claimant did not appear for or participate in the hearing. The reason the Claimant did not appear is because the Claimant's attorney had submitted a request to postpone the hearing on March 3, 2015 because the attorney had a previously schedule court case on that hearing date could not be available. Neither the Claimant nor the Claimant's attorney was available for the hearing.

REASONING AND CONCLUSIONS OF LAW:

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

4. 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.

871 IAC 26.8(2) provides:

A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of extreme emergency.

Here the Claimant did not participate in the hearing through no fault of the Claimant. The Claimant did not participate because her attorney could not be available on the hearing date. The Claimant's attorney complied with the aforementioned rule by timely requesting a postponement of the hearing. The Claimant's attorney has established good cause for his nonparticipation (conflict with a previously set court case) and did so in a timely manner. He could not send the Claimant alone and unrepresented to present her case. 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 March 22, 2015 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau. 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.

The Board would also direct the Claimant's attorney, upon receiving this decision, to contact the administrative law judge in order to provide the agency with his schedule of availability.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv