

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

JULIANA MARA

Claimant,

and

HEARTLAND EXPRESS INC OF IOWA

Employer.

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HEARING NUMBER: 08B-UI-01220

**EMPLOYMENT APPEAL BOARD
DECISION AFTER
GRANTED REHEARING**

NOTICE

THIS DECISION BECOMES FINAL unless a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

SECTION: 10A.601 Employment Appeal Board Review

DECISION

STATEMENT OF THE CASE:

The claimant filed an application for rehearing on the above-listed matter that was granted. The basis for the claimant's request filed April 1, 2008 was that the Board did not consider that the claimant did, in fact, appeal the claims deputy's decision. A review of the file corroborates the claimant's assertion. For this reason, the Board finds that good cause exists to reconsider this matter for which the majority of the Board member agree that this matter should be remanded.

FINDINGS OF FACT:

A hearing in the above matter was to be held February 19, 2008. However, sometime prior to the hearing, the employer withdrew its appeal. The claimant had also appealed, but this appeal was never addressed. The administrative law judge's decision was issued February 20, 2008 primarily on the withdrawal issue, leaving the claims deputy's decision in tact. The administrative law judge's decision has been appealed to the Employment Appeal Board.

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.

The claimant simultaneous appeal of the claims deputy's decision was not addressed. Thus, there was no record made regarding the separation issue since there was no hearing based on the employer's withdrawal. The fact that the claimant continued to be an aggrieved party without the benefit of having the opportunity to argue her case on the merits was a violation of her due process rights. As such, this matter must be remanded for a new hearing.

DECISION:

The decision of the administrative law judge dated February 20, 2008, is not vacated at this time. 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.

Elizabeth L. Seiser

John A. Peno

AMG/fnv

DISSENTING OPINION OF MARY ANN SPICER:

I respectfully dissent from the majority decision of the Employment Appeal Board. As the employer's representative, I would deny the claimant's rehearing request. I would also deny a remand of this matter, which would allow the original administrative law judge's decision to stand (employer's withdrawal granted). Ms. Mara never raised the issue of the calculated amount of benefits based on the claims deputy's decision prior to the withdrawal of the employer's appeal. The claimant was not the aggrieved party and therefore, could not protest the withdrawal of the employer's appeal.

AMG/fnv

Mary Ann Spicer