

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

ROBIN M WENTHOLD

Claimant,

and

CASEYS MARKETING COMPANY

Employer.

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HEARING NUMBER: 11B-UI-03186

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 26.8-1

DECISION

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES AND REMANDS** as set forth below.

FINDINGS OF FACT:

The Claimant did not make a request to withdraw the appeal to the Administrative Law Judge.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(1) provides:

- (1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of the presiding officer to whom the case is assigned. Requests for withdrawal may be made in writing or orally, provided the oral request is tape-recorded by the presiding officer.

The Claimant asserts that she did not send a letter withdrawing her appeal. Although the Administrative Law Judge found that the “request has been submitted in writing” the file contains no such written request. We have diligently searched our records and those of Workforce. There is no proof that the Claimant did withdraw this appeal, and so we reinstate the appeal to the Administrative Law Judge. Accordingly we remand for a hearing on the merits.

DECISION:

The administrative law judge’s decision dated April 8, 2011 is **REVERSED and REMANDED**. Although the finding of withdrawal is reversed, the claims representative decision is not vacated at this time, and remains in force unless and until the Administrative Law Judge enters a contrary order. 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. The Employment Appeal Board concludes that the claimant did not withdraw the appeal to the Administrative Law Judge.

John A. Peno

Monique F. Kuester

RRA/fnv