

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

ELIZABETH R NOGA
Claimant

APPEAL NO: 19A-UI-04868-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NEWTON CARE LLC
HERITAGE MANOR**
Employer

**OC: 05/26/19
Claimant: Respondent (6)**

Iowa Code § 96.5(7) – Vacation Pay
Iowa Administrative Code rule 871-26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 14, 2019, reference 03, decision that held the claimant was eligible to receive reduced unemployment insurance benefits for the week that end June 1, 2019, provided she met all other eligibility requirements, based on the deputy's conclusion that Ms. Noga received vacation pay for that week that was deductible from her unemployment insurance benefit eligibility. An appeal hearing was scheduled for 3:00 p.m. on July 11, 2019 and the parties were properly notified. The employer registered a telephone number for the hearing and was available through Tara Howell and Elena Cook. The claimant did not comply with the hearing notice instructions to register a telephone number for the hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-05010-JTT regarding the claimant's separation from the employment. The claimant is the appellant in the companion case regarding the separation. Prior to the presentation of evidence, the employer withdrew its appeal in this matter concerning vacation pay.

FINDINGS OF FACT:

The employer is the appellant in this appeal concerning vacation pay. The hearing in this matter was set as a consolidated hearing with Appeal Number 19A-UI-05010-JTT, concerning the claimant's appeal from the June 18, 2019, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based the deputy's conclusion that Ms. Noga was discharged on May 29, 2019 for conduct not in the best interest of the employer. According, to Iowa Workforce Development records, the disqualification decision has thus far precluded the claimant from receiving benefits in connection with the claim, rendering the vacation pay issue moot. The consolidated appeal hearing was set for July 11, 2019. Based on the claimant's failure to appear for the consolidated appeal hearing and the fact that no benefits have been disbursed in connection with the claim, the employer elected to withdraw the appeal in this matter. The request was made before a decision was entered in connection with the appeal in this matter.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-26.8(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 an administrative law judge or the manager or chief administrative law judge of the appeals bureau. Requests for withdrawal may be made in writing or orally, provided the oral request is recorded by the presiding officer.

An appeal may be dismissed upon the request of a party or in the agency's discretion when the issue or issues on appeal have been resolved in the appellant's favor.

The administrative law judge is familiar with the administrative file in the present matter and the companion appeal set for consolidated hearing. The administrative law judge deems it appropriate to grant the employer's request to withdraw the appeal in this matter. In the event the claimant makes a timely appeal to reopen the hearing record in the companion case, and in the event the record in the companion case is reopened, the administrative law judge would entertain a timely request from the employer to reopen the hearing record in this matter concerning vacation pay.

DECISION:

The employer's request to withdraw the appeal is approved. The June 14, 2019, reference 03, decision that held the claimant was eligible to receive reduced unemployment insurance benefits for the week that end June 1, 2019, provided she met all other eligibility requirements, based on the deputy's conclusion that the claimant received vacation pay for that week that was deductible from her unemployment insurance benefit eligibility, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs