

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY C POTHOVEN
Claimant

APPEAL NO. 16A-UI-11143-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYCO HYDRAULICS INC
Employer

OC: 08/14/16
Claimant: Appellant (6)

Iowa Code Section 96.4(3) – Able & Available
871 IAC 26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

Bradley Pothoven filed a late appeal from the September 8, 2016, reference 03, decision that denied benefits effective August 14, 2016, based on an agency conclusion that Mr. Pothoven was working sufficient hours that he not meet the unemployment insurance availability requirement. A hearing was scheduled for October 31, 2016. Prior to the hearing being held, Mr. Pothoven requested the appeal be withdrawn.

FINDINGS OF FACT:

Claimant Bradley Pothoven is the appellant in this matter. Mr. Pothoven field an appeal on October 13, 2016 from the September 8, 2016, reference 03, decision that denied benefits effective August 14, 2016, based on an agency conclusion that Mr. Pothoven was working sufficient hours that he not meet the unemployment insurance availability requirement. The appeal hearing was set for 1:00 p.m. on October 31, 2016. In Mr. Pothoven's appeal letter, he expressed concern that the September 8, 2016, reference 03, decision was preventing him from receiving benefits in connection with the most recent layoff. That was a reference to Mr. Pothoven's additional claim for benefits that was effective September 25, 2016. On October 10, 2016, a Workforce Development claims deputy entered a reference 05 decision that allowed benefits to Mr. Pothoven effective September 25, 2016, provided he meets all other eligibility requirements. The reference 05 decision was based on an agency conclusion that Mr. Pothoven was able to work, available for work, but temporarily laid off. As the administrative law judge prepared for the appeal hearing, he saw that Mr. Pothoven's unemployment insurance claim remained locked in connection with the September 25, 2016 additional claim despite the October 10, 2016, reference 05, decision. The administrative law judge also observed that there was no decision that disqualified Mr. Pothoven in connection with the September 25, 2016 additional claim for benefits. The administrative law judge conferred with a lead worker in the Benefits Bureau and determined that the agency had erred in not unlocking the claim in connection with the September 25, 2016 additional claim. The Benefits Bureau has

corrected that error by unlocking the claim effective September 25, 2016. On the morning of October 31, 2016, the administrative law judge explained all of this to Mr. Pothoven. In light of that conversation, Mr. Pothoven requested to withdraw his appeal. The request to withdraw the appeal was filed before the administrative law judge had entered a decision in connection with the appeal.

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 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 administrative law judge is apprised of the particulars of the appeal, has reviewed the agency's administrative records, and concludes that the claimant's request to withdraw his appeal should be granted.

DECISION:

The claimant's request to withdraw the appeal is approved. The September 8, 2016, reference 03, decision that denied benefits effective August 14, 2016 shall stand. However, because the able and available requirement involves a week-by-week determination, the reference 03 decision has no impact on the additional claim for benefits that was effective September 25, 2016. Instead, the October 10, 2016, reference 05, decision controls for the period beginning September 25, 2016. The hearing that was set for October 31, 2016 is cancelled.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs