

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
LESHAWN M SMITH Claimant ASCOTT TRANSCRIPTION SERVICE INC Employer	APPEAL NO: 12A-UI-11852-DT ADMINISTRATIVE LAW JUDGE DECISION OC: 09/09/12 Claimant: Appellant (6)

871 IAC 26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

An appeal was filed from a representative's decision dated September 24, 2012 (reference 01). A hearing was scheduled for October 25, 2012. At the time for the hearing but in lieu of proceeding with the hearing, the appellant requested the appeal be withdrawn. Therefore, there is no need for a hearing. Based on a review of the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Should the appellant's request to withdraw the appeal be granted?

FINDINGS OF FACT:

A request has been made by Leshawn M. Smith (claimant), the appealing party, to withdraw the appeal. The reason for her request is that she is not asserting that the employer has already closed permanently, but that her layoff was due to a reduction in force which might eventually result in a business closure, and that she understands that unless or until the business does actually close, she is eligible to continue receiving regular unemployment insurance benefits.

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- (1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of the presiding officer to whom the case is assigned.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.

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of twenty-six times the individual's weekly benefit amount or the total of the claimant's base period wage credits. However, under usual circumstances, if the claimant is laid off due to the claimant's employer going out of business at the factory, establishment, or

other premises at which the claimant was last employed, the maximum benefits payable are extended to the lesser of thirty-nine times the claimant weekly benefit amount or the total of the claimant's wage credits. Iowa Code §96.3-5.

871 IAC 24.29(2) provides:

(2) Going out of business means any factory, establishment, or other premises of an employer which closes its door and ceases to function as a business; however, an employer is not considered to have gone out of business at the factory, establishment, or other premises in any case in which the employer sells or otherwise transfers the business to another employer, and the successor employer continues to operate the business.

871 IAC 24.29(1) provides:

Business closing.

(1) Whenever an employer at a factory, establishment, or other premises goes out of business at which the individual was last employed and is laid off, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because of the going out of business of the employer within the same benefit year of the individual. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the Claim for Benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

The request of the appealing party to withdraw the appeal should be approved.

DECISION:

The decision of the representative dated September 24, 2012 (reference 01) is affirmed. The request of the appealing party to withdraw the appeal is approved, and there will be no hearing. The decision of the representative shall stand and remain in full force and effect. The claimant is entitled to receive regular unemployment insurance benefits, provided she is otherwise eligible. The claimant in the future may reopen her claim and assert that there has been a business closure if a full business closure does occur during the claimant's benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs