

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

ANDREW B RIBNER

Claimant,

and

**MARSHALLTOWN
MEDICAL/SURGICAL**

Employer.

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HEARING NUMBER: 09B-UI-12108

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The Claimant filed a claim for benefits with an original claim date of July 19, 2009. The Claimant worked for the Employer from July 12, 2007 through July 16, 2009. His based period for his claim ran from April 1, 2008 through March 31, 2009. The Employer protested this claim on July 30, 2009. A decision allowing benefits was issued on August 14, 2009. The Employer appealed to an administrative law judge. The Employer withdrew the appeal based on its understanding that the Claimant could and would withdraw his application for benefits. (Joint Withdrawal of Appeal & Dismissal of Claim). On November 13, 2009 the Administrative Law Judge approved the appeal withdrawal and allowed benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2009) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a 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.

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(1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the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.

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Neither the Code nor the rules allows for withdrawal of an application for benefits. The Employer cites us no such provision, and this is because none exists. There is a provision for withdrawing a "combined wage claim" (involving employees with wages from other states). 871 IAC 24.38(3). This is not such a claim.

The rules do allow for cancellation of a claim for benefits:

871 IAC 24.2(4)

Cancellation of unemployment insurance claim.

- a. A request for cancellation of an unemployment insurance claim may be made by the individual in writing and be directed to the Unemployment Insurance Service Center, Department of Workforce Development, P.O. Box 10332, Des Moines, Iowa 50306. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made.
- b. A cancellation request which is the result of employer coercion or intimidation shall be denied and the employer could be subjected to serious misdemeanor charges.
- c. Cancellation requests within the ten-day protest period. The claims section, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:
 - (1) The individual found employment or returned to regular employment within the protest period.
 - (2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.
 - (3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.
 - (4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.
- d. Other valid reasons for cancellation whether or not ten-day protest period has expired.
 - (1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.
 - (2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.
 - (3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance which was filed prior to the unemployment insurance claim.
 - (4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim must be filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) The Iowa wages are erroneous and are deleted and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

e. If a claim is canceled and becomes final with no appeal being filed, a valid claim with Iowa as the paying state shall not be reestablished with the same effective date.

f. Voiding a claim. If it is determined a claim has been filed under an incorrect social security number, the claim shall be voided rather than canceled.

g. All unemployment insurance claims canceled shall be clearly identified as such and the administrative record of the individual's file shall be destroyed three years after final action.

We set out this rule, in all its tedious glory, because it is a very detailed rule. There are 4 specified reasons for cancellation if within the protest period. There are 7 specified reasons for cancellation regardless of the timing. None of these provisions cover this case. There is no mechanism for canceling – or withdrawing – the claim for benefits.

Another problem with settling an unemployment claim in this manner is that “[a]ny agreement by an individual to waive, release, or commute the individual's rights to benefits or any other rights under this chapter shall be void...” Iowa Code §96.15 (violation is misdemeanor). True, the rules of the Department allow for informal settlement in cases where the *Department* is a party – but this in the chapter of the rules dealing with charges to employers' accounts. 871 IAC 23.56(1). This provision is to implement Iowa Code §17A.10 which allows for informal settlement of contested cases – unless otherwise proscribed by statute. But this matter does not involve charges to accounts and Workforce is not a party. In the case at bar, §96.15 proscribes informal settlement.

Consider if this Claimant were to withdraw his application for benefits. What would prevent him from filing anytime in the next calendar quarter? If he did so the Employer would still be on the hook for benefits as it had the Claimant as an employee for over 3 quarters of what would be the new base period. The only value a withdrawal would get for the Employer would be if the Claimant also agreed not to file again until January 2011 (at which point the Employer would no longer be a base period employer). This would undoubtedly run afoul of Iowa Code §95.15. Moreover, the mere agreement to stop seeking benefits now, in exchange for a withdrawal of appeal, seems to us to be an agreement to waive “any other rights under this chapter” and would be void. It would be possible for the Claimant to stop calling in his weekly claims. He would, of course, not be paid benefits if he didn't call in a claim for benefits. Iowa Code §96.4. But he cannot, consistent with §96.15, enter into a *binding* agreement not to call in his weekly claims. In short, try as they might there is just no way the parties can legally make this matter “as if it never happened.”

It is apparent that the parties each mistakenly thought that the Claimant could withdraw his application for benefits. We cannot, as asked, enforce this void agreement. But it is manifestly unfair to hold the Employer to its side of the bargain and not the Claimant. Through no fault, or perhaps equal fault, of either party the agreement is void. Being void *neither* party is held to it and we reinstate the Employer's appeal, and remand this matter for further proceedings.

DECISION:

The decision of the administrative law judge dated November 13, 2009 is not vacated. 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.

John A. Peno

Elizabeth L. Seiser

Monique Kuester

RRA/ss