

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM H SWEET

Claimant

APPEAL NO. 12A-UI-13525-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABSOLUTELY FIT LLC

Employer

OC: 09/30/12

Claimant: Respondent (6-R)

871 IAC 26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the November 5, 2012, reference 03, decision that allowed benefits to the claimant provided he was otherwise eligible and held that the employer's protest could not be considered because it was untimely. A hearing was scheduled for December 11, 2012. Chris Juran represented the employer. Claimant Adam Sweet did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit One and Department Exhibit D-1 were received into evidence. After the hearing record was closed, but before a decision had been entered, the employer requested that the appeal be withdrawn.

FINDINGS OF FACT:

The employer is the appellant. The appeal hearing was set for December 11, 2012. Chris Juran, owner, represented the employer at the hearing. Prior to the hearing record closing, Mr. Juran indicated that he was considering whether to withdraw the appeal. The administrative law judge clarified for Mr. Juran that withdrawal of the appeal could or would result in the employer being charged not only for benefits previously disbursed to the claimant, but also for benefits disbursed to the claimant in the future. In the absence of a clear request to withdraw the appeal, the administrative law judge suggested that hearing move forward. After the evidence was presented and received into the record, the hearing record closed. When the administrative law judge indicated that he would follow up with a written decision, Mr. Juran again raised the subject of withdrawing the appeal. The administrative law judge had previously explained to Mr. Juran that the opportunity to withdraw the appeal would end with the entry of the decision. When Mr. Juran again raised the subject of withdrawing the appeal, he made statements that amounted to a mixed message on whether or not he wanted to withdraw the appeal. When the administrative law judge indicated he could not approve a request to withdraw an appeal when the request was less than clear, Mr. Juran clearly and unequivocally requested to withdraw the appeal. The administrative law judge granted the clearly stated request to withdraw the appeal, but only after making certain that the employer clearly understood the consequences of withdrawing the appeal. The request to withdraw the appeal came prior to entry of a decision in connection with the appeal.

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 administrative law judge has reviewed the records and files herein and concludes that the appealing party's request to withdraw the appeal should be approved.

DECISION:

The employer's request to withdraw the appeal is approved. The Agency representative's November 5, 2012, reference 03, decision remains in effect. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

This matter is remanded to the Claims Division for determination of whether the claimant has met the availability requirement since he established his claim for benefits and whether the claimant has appropriately reported wages from any employment since he established his claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/bjc