

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MARCO D SHANKLIN
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL NO. 23A-UI-03323-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (6)

Iowa Code Sections 96.3(7), 96.5(8) & 96.16(4) – Fraud Overpayment
Iowa Administrative Code rule 871-26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

On March 28, 2023, Marco Shanklin (claimant) filed a late appeal from the March 17, 2023 (reference 05) decision held the claimant was overpaid \$1,081.00 in regular state benefits for five weeks between July 5, 2020 and August 8, 2020, based on an Iowa Workforce Development investigator's determination the claimant had failed to report wages earned with Hope Community Development. The reference 05 decision held a 15% penalty would be added to the overpayment amount due to misrepresentation and held an administrative penalty would be assessed in the 36 months following the last week of misrepresentation. The reference 05 decision held that the overpayment, plus interest and penalty, must be repaid before any further benefits could be paid to the claimant. The reference 05 decision stated legal action could be taken to recover the overpayment, including lien filing, garnishment of wages, and withholding of state and federal tax refunds. After due notice was issued, a hearing was commenced on April 13, 2023. Claimant participated on April 13, 2023. Kendra Mills, IWD Investigator, represented Iowa Workforce Development Integrity Bureau on April 13, 2023. There were seven appeal numbers set for a consolidated hearing: 23A-UI-03320-JT-T, 23A-UI-03321-JT-T, 23A-UI-03322-JT-T, 23A-UI-03323-JT-T, 23A-UI-03324-JT-T, 23A-UI-03325-JT-T, and 23A-UI-03326-JT-T. Exhibit A through D were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, KCCO, WAGE-C, and WAGE-B.

Soon after the administrative law judge commenced taking the claimant's testimony on April 13, 2023, the claimant asserted he had not received and not reviewed the IWD mailed exhibits 1-1 through 10 and had not known about or reviewed the duplicate exhibits 1-1 through 10 that IWD emailed to him. The claimant had earlier in the hearing confirmed receipt and possession the IWD exhibits. Based on the claimant's assertion, the consolidated hearing was adjourned until 2:00 p.m. on April 24, 2023. New hearing notices were mailed on April 14, 2023. Shortly before the hearing was to recommence on April 24, 2023, the claimant emailed a request to withdraw the appeal, but referenced only the first appeal number. The claimant and Ms. Mills appeared at 2:00 p.m. on April 24, 2023. At that time, the claimant requested to withdraw his appeal in all seven appeal numbers.

ISSUE:

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

FINDINGS OF FACT:

The claimant is appellant in seven companion appeal numbers. On April 24, 2023, the claimant submitted a written request to withdraw the appeal, but referenced only the first appeal number. On April 24, 2023, the claimant made an on-the-record request to withdraw the appeal in all seven appeal numbers. After questioning the claimant to ensure the request was voluntarily made, the administrative law judge granted the claimant's request to withdraw the appeal pertaining to all seven appeal numbers, including the present matter. The request to withdraw the appeal was made before the administrative law judge 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 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 tape-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 concludes that the claimant's voluntary and timely request to withdraw the appeal should be approved.

DECISION:

The claimant's request to withdraw the appeal is approved. The March 17, 2023 (reference 05) fraud overpayment decision remains in effect.



James E. Timberland
Administrative Law Judge

April 26, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.