

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE L BURKE
Claimant

APPEAL NO: 15A-UI-12056-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/19/15
Claimant: Respondent (6/R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 22, 2015, reference 05, unemployment insurance decision that allowed benefits to the claimant effective October 18, 2015, provided the claimant was otherwise eligible; based on an Agency conclusion that the claimant was medically able to work and available for work. A hearing was scheduled for November 17, 2015. Dane Swenson of Corporate Cost Control appeared for the employer. Brenda Roberts of Hy-Vee was present as a witness for the employer. Claimant Connie Burke had provided a telephone number for the hearing but was not available at that number at the time of the hearing. After a brief discussion, the employer requested to withdraw the appeal.

FINDINGS OF FACT:

Hy-Vee is the appellant in this matter. Hy-Vee's appeal was from a Claims Deputy's decision that addressed whether Ms. Burke has been medically able to work and available for work since October 18, 2015. Hy-Vee's appeal letter and proposed exhibits reflected a desire to adjudicate the separation from the employment. Though the parties had met for a fact-finding interview on August 5, 2015. That proceeding did not result in a decision adjudicating the separation because Hy-Vee asserted that Ms. Burke was still an employee at that time and Ms. Burke indicated she was uncertain whether she was still an employee. Instead, the August 6, 2015, reference 01, decision that resulted from the August 5, 2015 fact-finding interview addressed only whether Ms. Burke was medically able to perform work. The reference 01 decision concluded Ms. Burke was not medically able to perform work and denied benefits effective July 19, 2015; based solely on the work ability issue. The October 22, 2015, reference 05, decision from which the employer had appealed in this matter addressed only the work ability and availability for work issues. Because Ms. Burke was unavailable for the appeal hearing set for November 17, 2015 and, therefore, was unavailable to waive formal notice on the separation issues, those could not be added to the November 17, 2015 appeal hearing. After a brief discussion to clarify the issues that could be addressed at the appeal hearing and those that could not be addressed at the appeal hearing, Hy-Vee, through its representative, elected to withdraw the appeal from the October 22, 2015, reference 05, decision, with the understanding that the administrative law judge would remand the matter to the Benefits Bureau so that the Benefits Bureau can adjudicate the separation issues after giving proper notice to the parties. The request to withdraw the appeal was made before a decision had been entered 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 has reviewed the records and file 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 October 22, 2015, reference 05, unemployment insurance decision that allowed benefits to the claimant effective October 18, 2015, provided the claimant was otherwise eligible, based on an Agency conclusion that the claimant was medically able to work and available for work, shall remain in effect.

This matter is remanded to the Benefits Bureau for adjudication of the claimant's eligibility for benefits and the employer's liability for benefits based on the claimant's separation from the employer.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/can