

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON D MITCHELL
Claimant

APPEAL NO. 09A-UI-00867-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

**OC: 11/30/08 R: 03
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 January 6, 2009 (reference 02). A hearing was scheduled for February 5, 2009. At the time for the hearing but in lieu of the hearing being held, the appellant agreed that the appeal should be withdrawn.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:

The representative's decision concluded that Jason D. Mitchell (claimant) was eligible to receive unemployment insurance benefits because he had sufficient wages from another full-time employer, but that his part-time wages from Kum & Go, L.C. (employer) would not be part of his benefit calculation because of what was determined to be a disqualifying separation from employment. Information from the employer to the Appeals Section after the claimant's appeal suggests that it agrees that the representative's decision was incorrect. The employer has since returned the claimant to employment status. However, as to addressing the substance of the representative's decision, there is a jurisdictional problem in that the claimant did not make his appeal until after the deadline for appeal, as rather than mailing his appeal, he waited until he was able to go in person into his local Agency office.

A reversal of the representative's decision would not change the claimant's eligibility for benefits. The claimant's high quarter of his base period is the fourth quarter of 2007, in which he had \$9,150.00 in wages from his primary full-time employer and \$944.00 in wages from the part-time employer. The claimant has three dependents. Even disregarding the wages from the part-time employer, the wages from the primary full time employer in the fourth quarter of 2007 are high enough that application of the benefit formula results in the maximum weekly benefit of \$409.00.

The claimant remains eligible for full or partial unemployment insurance benefits up to the maximum of \$409.00 for each week he does not earn at least \$424.00 (\$409.00 plus \$15.00) in combined wages in either his primary employment or in his part-time employment. This will remain the case until the expiration of the claimant's claim year November 29, 2009, barring any new intervening changes to the claimant's eligibility status. If there is a need for the claimant to establish a new claim year after expiration of the current year, as there has been newly resumed employment with the part-time employer, the status of that employment would be freshly examined at that future time.

Since there is the problem with the timeliness of his appeal and reversal of the representative's decision would not change anything as to the claimant's eligibility, the claimant agrees that the appeal should be withdrawn.

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

DECISION:

The decision of the representative dated January 6, 2009 (reference 02) 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 unemployment insurance benefits, provided he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw