

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

WESLEY L CLARK
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 22A-UI-12868-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/17/21
Claimant: Respondent (6R)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(2)A(6) – Statements of Charges
Iowa Admin. Code r. 871-26.8(1) – Withdrawal of Appeal

STATEMENT OF THE CASE:

On May 18, 2022, employer Advance Services, Inc. filed an appeal from the May 9, 2022 statement of charges for the first quarter of 2022 (reference 05). A telephonic hearing was scheduled for 8:00 a.m. on Tuesday, July 12, 2022. Prior to a record being created, the employer stated it was not protesting the current charges on its statement of charges. It was seeking to have a notice of claim sent regarding a later separation, so it could protest eligibility based on that separation. Based on that information, the parties concluded the appeal would be withdrawn.

ISSUE:

Should the request to withdraw the appeal be granted?

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds that: The administrative law judge explained at the outset of the hearing that the May 9, 2022 statement of charges for the first quarter of 2022 had been improperly set up for hearing. An unemployment decision on the merits of the November 2021 separation had already been issued (reference 01), and therefore that is the matter that needed to be heard on appeal. The employer then stated it was not objecting to claimant's eligibility for benefits based on that November 2021 separation.

The employer explained that claimant had returned to work following that separation and had then separated a second time in January 2022. Claimant subsequently reopened his claim effective March 13, 2022. Following that January 2022 separation, the employer did not receive a notice of claim and did not have an opportunity to protest claimant's eligibility for benefits. The employer asked that the administrative law judge have the agency send it a notice of claim and provide it an opportunity to protest claimant's eligibility for benefits.

Additionally, a request has been made by the appealing party to withdraw the appeal. The request has been submitted verbally. The administrative law judge received the employer's request to withdraw the appeal on July 12, 2022.

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 files herein and concludes that the request of the appealing party to withdraw the appeal should be approved.

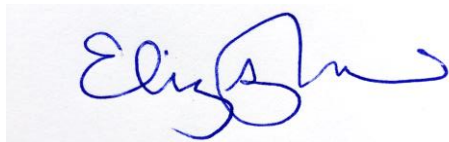
This matter will be remanded with instructions to issue the employer a Notice of Claim for the January 2022 separation.

DECISION:

The May 9, 2022 statement of charges for the first quarter of 2022 (reference 05) is affirmed. The request of the appealing party to withdraw the appeal is approved, and the statement of charges shall stand and remain in full force and effect.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development with instructions to issue the employer a Notice of Claim and provide the employer an opportunity to protest following claimant's claim reopening effective March 13, 2022.



Elizabeth A. Johnson
Administrative Law Judge
Administrative Hearings Division, UI Appeals Bureau
Iowa Department of Inspections and Appeals

August 12, 2022
Decision Dated and Mailed

lj/lj

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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.