

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTONIO DE LEON
Claimant

APPEAL NO. 16A-UI-13475-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION
Employer

OC: 11/13/16
Claimant: Appellant (6)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

Antonio De Leon filed a timely appeal from the December 9, 2016, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. De Leon was discharged on November 10, 2016 for violation of a known company rule. An appeal hearing was scheduled for January 11, 2017. Prior to the hearing being held, Mr. De Leon requested that the appeal be withdrawn.

FINDINGS OF FACT:

Claimant Antonio De Leon is the appellant in this matter. On December 23, 2016, the Appeals Bureau mailed notice to Mr. De Leon and the employer concerning the appeal hearing set for 9:00 a.m. on January 11, 2017. On December 27, 2016, Mr. De Leon registered a telephone number for the hearing. On December 29, 2016, Mr. De Leon submitted a letter in Spanish, which letter suggested that Mr. De Leon wished to withdraw his appeal. The Appeals Bureau had the letter translated into English. On January 3, 2017, the administrative law judge received and reviewed the translated letter. On that same day, the administrative law judge telephoned Mr. De Leon and spoke with him through a Spanish-English interpreter to clarify whether it was indeed Mr. De Leon's intent to withdraw the appeal and cancel the appeal hearing. The administrative law judge made certain that Mr. De Leon understood the distinction between disqualifications based on separations from employment and disqualifications based on the able and available requirements. Before, during and after that explanation, Mr. De Leon confirmed it was indeed his intention to withdraw the appeal. The administrative law judge made certain that the request to withdraw the appeal was a knowing and voluntary request.

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- (1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of the presiding officer to whom the case is assigned.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 is familiar with the particulars of the appeal through the lower decision, the fact-finding materials, and the appeal letter. The claimant has made a knowing and voluntary request to withdraw the appeal. The request to withdraw the appeal was made before a decision had entered in connection with the appeal. The administrative law judge concludes that Mr. De Leon's request to withdraw the appeal should be granted.

DECISION:

The claimant's request to withdraw the appeal is approved. The December 9, 2016, reference 02, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the November 10, 2016 separation, remains in effect. The appeal hearing set for 9:00 a.m. on January 11, 2017 is hereby cancelled.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs