

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

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**KATELYNN M DUNCAN**  
Claimant

**APPEAL NO. 23A-UI-04073-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BICKFORD SENIOR LIVING GROUP LLC**  
Employer

**OC: 03/19/23  
Claimant: Appellant (6)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Administrative Code rule 871-26.8(1) - Withdrawal of Appeal

**STATEMENT OF THE CASE:**

On April 19, 2023, Katelynn Duncan (claimant) filed a timely appeal from the April 10, 2023 (reference 01) decision that denied benefits effective March 19, 2023, based on the deputy's conclusion the claimant was unduly limiting her availability for work by waiting to be recalled to Bickford Senior Living Group, L.L.C. and not being willing to accept suitable work with other employers. An appeal hearing was set for May 4, 2023 and the parties were appropriately notified by hearing notice mailed on April 21, 2023. Samantha Summers appeared on behalf of the employer. The claimant did not initially call in for the hearing. The claimant was at work for the employer at the time of the hearing. The employer facilitated the claimant's participation in the hearing, by providing the claimant the toll-free number for the hearing. The claimant then appeared. At the time of the hearing, the claimant requested to withdraw the appeal.

**ISSUE:**

Whether the claimant was able to work and available for work during the period beginning March 19, 2023.

**FINDINGS OF FACT:**

Katelynn Duncan (claimant) is the appellant in this matter. At the time of the May 4, 2023 appeal hearing, the claimant made an on-the-record request to withdraw the appeal. The claimant advised that she was back at work with the employer and no longer needs unemployment insurance benefits. The administrative law judge inquired whether anyone had pressured the claimant to withdraw the appeal. The claimant indicated no one had pressured her to withdraw the appeal. The administrative law judge made sure the claimant was aware of the recently mailed May 2, 2023 (reference 02) overpayment decision that held the claimant was overpaid \$910.00 in benefits, based on the April 10, 2023 (reference 01) decision from which the claimant appealed in the presented matter. The administrative law judge advised the claimant she would be stuck with both the disqualification decision and the overpayment decision if she withdrew her appeal in the present matter, which would lead to the claimant being required to repay the \$910.00 benefits. The administrative law judge told the claimant it did not appear to be in the claimant's best interests to withdraw the appeal. The claimant

reaffirmed her desire to withdraw the appeal. The claimant made her withdrawal request 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 knowing, voluntary and timely request to withdraw the appeal should be approved.

**DECISION:**

The claimant's request to withdraw the appeal is approved. The April 10, 2023 (reference 01) decision that denied benefits effective March 19, 2023, based on the deputy's conclusion the claimant was unduly limiting her availability for work, remains in effect. The reference 01 availability disqualification decision applies to the five-week period of March 19, 2023 through April 22, 2023.



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James E. Timberland  
Administrative Law Judge

May 5, 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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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.