

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

KAYLIE D MARCELLUS
Claimant

APPEAL NO. 22A-UI-11814-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/15/20
Claimant: Appellant (6)

P.L. 116-136, §2104 – Federal Pandemic Unemployment Compensation Overpayment
Iowa Code Section 96.3(7) - Overpayment
Iowa Administrative Code rule 871-26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

On May 7, 2022, Kaylie Marcellus (claimant) filed a timely appeal from the April 28, 2022 (reference 03) decision that held the claimant was overpaid \$300.00 in Federal Pandemic Unemployment Compensation (FPUC) for the week ending January 2, 2021, due to the claimant's incorrect report and/or failure to report wages earned with Baroncini, L.L.C. A hearing was scheduled for July 20, 2022 and the claimant duly notified of the hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-11813-JT-T. Prior to the hearing being held, the claimant/appellant requested the appeal be withdrawn.

ISSUE:

Should the appellant's request to withdraw the appeal be granted.

FINDINGS OF FACT:

The claimant is the appellant in this matter and in a companion appeal number. A hearing was scheduled for July 20, 2022. On July 15, 2022, the claimant emailed to the Appeals Bureau a request to withdraw the appeal in both appeal matters and request to cancel the hearing. The Appeals Bureau staff brought the withdrawal request to the attention of the administrative law judge on the morning of July 20, 2022. The withdrawal request was made 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- (1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of an administrative law judge or the manager or chief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 had reviewed the Agency administrative file and concludes the claimant's timely request to withdraw the appeal should be approved.

DECISION:

The claimant's request to withdraw the appeal is approved. The April 28, 2022 (reference 03) decision that held the claimant was overpaid \$300.00 in FPUC benefits between for the week ending January 2, 2021, remains in effect. The hearing set for July 20, 2022 is cancelled.



James E. Timberland
Administrative Law Judge

September 12, 2022
Decision Dated and Mailed

jet/sa

Note to Claimant: This decision determines you have been overpaid FPUC under the CARES Act. If you disagree with this decision, you may file an appeal by following the instructions on the final page of this decision. Additionally, instructions for requesting a waiver of this FPUC overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a FPUC waiver, you will have to repay the FPUC benefits you received.

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>.

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.