

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNA M CLARK
Claimant

APPEAL NO. 09A-UI-15590-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Original Claim: 06/21/09
Claimant: Appellant (6)**

871 IAC 26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's October 6, 2009 decision (reference 02) that held her overpaid \$1,200.00 in benefits she received for the weeks ending July 4 through July 18, 2009. The overpayment occurred as the result of a representative's decision that disqualified her from receiving benefits as of June 21, 2009. A hearing was scheduled on December 15, 2009. Prior to the hearing, the claimant's attorney, Andrew Stoltze, withdrew the claimant's appeal from the overpayment decision with the understanding that if the claimant further appealed the decision that disqualified her from receiving benefits and it was reversed, the overpayment decision would as a matter of law be amended so the claimant was not overpaid. Based on the claimant's withdrawal request, the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant appealed the October 6, 2009 overpayment decision because she had appealed an administrative law judge's decision that affirmed the representative's disqualifying decision. See appeal for decision 09A-UI-11241-BT. On December 3, 2009, the Employment Appeal Board affirmed the decision for 09A-UI-11241-BT. As a result of the Employment Appeal Board's December 3 decision, the claimant withdrew her appeal from the October 6, 2009 decision. The claimant's withdrawal is conditioned upon the overpayment being adjusted or reversed if upon further appealing, the initial disqualifying decision is reversed so the claimant would be eligible to receive benefits for the weeks at issue. As a matter of law, the overpayment decision would also be reversed.

The claimant correctly understood Iowa Code 96.3-7-b does not apply in this case because the employer participated in the hearing fact finding interview and the initial representative's decision held her disqualified from receiving benefits. The claimant's withdrawal request was tape-recorded on December 15, 2009.

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(1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of the presiding officer to whom the case is assigned.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 claimant's request to withdraw her appeal is approved. As a matter of law if the decision that held the claimant's employment separation for disqualifying reason is ultimately reversed on further appeals, the claimant would not be overpaid, because she would then be legally entitled to receive benefits for the weeks ending July 4 through 18, 2009.

DECISION:

The representative's October 6, 2009 decision (reference 02) is affirmed. The claimant's withdrawal request is approved. As a result of the Employment Appeal Board's December 3, 2009 decision, the claimant is overpaid \$1,200.00 in benefits she received for the weeks ending July 4 through 18, 2009. If the decision that held the claimant disqualified from receiving benefits is reversed, the overpayment will, as a matter of law, be reversed.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw