

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

STEPHEN K ROTH
Claimant

CITY OF WASHINGTON
Employer

APPEAL NO. 22A-UI-16197-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/14/21
Claimant: Appellant (6)**

Iowa Code Section 96.3(7) - Overpayment
Iowa Administrative Code rule 871-26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

On August 16, 2022, Tammy Roth filed a timely appeal on behalf of Stephen Roth (claimant) from the August 9, 2022 (reference 03) decision that held the claimant was overpaid \$1,478.00 in benefits for the period between April 11, 2021 and December 18, 2021, based on the deputy's conclusion the claimant failed to report and/or incorrectly reports wages earned with City of Washington. A hearing was initially scheduled for September 14, 2022, but was rescheduled by agreement to September 16, 2022 due to the claimant being unavailable on September 14, 2022. There were three appeal numbers set for a consolidated hearing: 22A-UI-16196-JT-T, 22A-UI-16197-JT-T, and 22A-UI-16198-JT-T. Prior to the rescheduled hearing being held, the claimant/appellant requested the appeal be withdrawn.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 two company appeal numbers. The rescheduled hearing was set for September 16, 2022. On the evening of September 14, 2022, the claimant emailed a request to withdraw the appeal in all three appeal numbers. In the request, the claimant added an extra digit to the appeal numbers, but the correct appeal numbers were readily discernible. The Appeals Bureau staff forwarded the claimant's withdrawal request to the administrative law judge on the morning of September 16, 2022, prior to the scheduled start of the hearing. The administrative law judge attempted to reach the claimant at the claimant's number of record. The claimant was not available at the number, but the administrative law judge was able to speak with the claimant's spouse, Tammy Roth, who confirmed the claimant, rather than his spouse, had submitted the emailed request to withdraw the appeal and confirmed the request was freely and voluntarily made.

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- (1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of an administrative law judge or the manager or chief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 timely request to withdraw the appeal should be approved.

DECISION:

The claimant's request to withdraw the appeal is approved. The August 9, 2022 (reference 03) decision that held the claimant was overpaid \$1,478.00 in benefits for the period between April 11, 2021 and December 18, 2021, based on the deputy's conclusion the claimant failed to report and/or incorrectly reports wages earned with City of Washington, remains in effect. The hearing set for September 16, 2022 is cancelled.



James E. Timberland
Administrative Law Judge

October 7, 2022
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
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.