

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY M NEUENDORF**  
Claimant

**APPEAL NO. 11A-UI-09954-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 08/22/11**  
**Claimant: Respondent (6/R)**

871 IAC 26.8(1) - Withdrawal of Appeal

**STATEMENT OF THE CASE:**

The employer appealed a representative's July 19, 2011 determination (reference 03) that held the claimant eligible to receive benefits as of June 19, 2011, because she was then willing to work the hours her occupation required. A hearing was scheduled on August 19. The claimant did not respond to the hearing notice or participate at the hearing. Alice Rose Thatch, a representative with Corporate Cost Control Inc., and Jenna Bates and Collette Miller appeared as witnesses for the employer. At the hearing, the employer withdrew the appeal from reference 03 because the employer wanted to appeal or protest charges against its account. The employer had no knowledge about the claimant's availability for work. Based on the employer'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.

**ISSUE:**

At issue in this matter is whether the appellant herein should be allowed to withdraw its appeal.

**FINDINGS OF FACT:**

The claimant initially established a claim for benefits during the week of August 22, 2010. Her maximum weekly benefit amount was \$86. A representative's October 5, 2010 determination (reference 01) held the claimant was not eligible to receive benefits as of August 22, 2010, because she restricted the number of hours she was willing to work. The claimant did not appeal this decision.

The claimant started working for Affina LLC during the fourth quarter of 2010. The last day the claimant worked for the employer was December 18, 2010. The claimant continued to work for Affina in 2011. During the first quarter of 2011, the claimant requalified to receive benefits by earning more the \$860 from Affina LLC.

The claimant did not reopen her claim for benefits until the week of June 19, 2011. The first week she filed a claim for benefits after establishing her claim in August 2010 was the week ending June 25, 2011.

Since the claimant had requalified to receive benefits by the time she reopened her claim, the week of June 19, the employer withdrew the appeal concerning the issue of whether the claimant was available to work as of June 19. Since the claimant had already requalified to receive benefits by June 19, the employer understood the claimant would be eligible to receive benefits as of June 19 even if the reasons for her employment separation were for disqualifying reasons. The employer withdrew its appeal from the issue addressed in the determination for reference 03, but requested that the Department determine if the employer's account should be charged for benefits paid to the claimant. The request to determine the employer's liability and the employer's August 19, 2011 withdrawal request were tape-recorded.

#### **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 employer's request to withdraw its appeal is approved. The issue of whether the employer's account is subject to charge after the claimant earned ten times her weekly benefit amount will be remanded to the Claims Section to determine.

#### **DECISION:**

The representative's July 19, 2011 determination (reference 03) is affirmed. The employer's request to withdraw its appeal from this determination is approved. Since the claimant earned requalifying wages between December 19, 2010, and June 19, 2011, she is eligible to receive benefits as of June 19, 2011, regardless of the reasons for her employment separation. The issue of whether the employer's account is subject to charge is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw