

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACQUELINE M ASTOR
Claimant

CORDES CREAMERY INC
Employer

APPEAL NO. 24A-UI-03226-JT-T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/18/24
Claimant: Appellant (6R)**

Iowa Code Section 96.5(12) – Separation from Supplemental Part-time Employment
Iowa Administrative Code rule 87126.8(1) Withdrawal of Appeal

STATEMENT OF THE CASE:

On March 22, 2024, Jacqueline Astor (claimant) filed a late appeal from the March 8, 2024 (reference 01) decision. The reference 01 decision *allowed benefits to the claimant*, provided the claimant was otherwise eligible. The decision stated, “You are eligible to receive unemployment insurance benefits since there are sufficient wages earned from other employers on your claim.” The reference 01 decision also stated that wages earned from the *part-time* employment with Cordes Creamery, Inc. would be removed from the claim until the claimant had worked in and been paid wages for insured work equal to 10 times her weekly benefit amount following her separation from Cordes Creamery. The reference 01 decision concluded the claimant was discharged from *supplemental part-time* employment on February 8, 2024. Importantly, the decision cited Iowa Code section 96.5(12) (regarding separations from *supplemental part-time* employment) as the legal authority for the decision.

I had issued a default decision on April 16, 2024 in response to Ms. Astor’s absence from the appeal hearing set for that date. Ms. Astor made a timely request to reopen the hearing record. On April 23, 2024, I reopened the hearing record for good cause. The good cause to reopen the hearing record was based on Ms. Astor’s April 23, 2024 submission of a dental record showing it was necessary for Ms. Astor to be present for her child’s dental abscess procedure at the time of the April 16, 2024 appeal hearing. On April 23, 2024, Ms. Astor and employer representative Heather Cordes agreed to appear for the reopened appeal proceeding at 2:00 p.m. on April 24, 2024.

Ms. Astor appeared for the reopened hearing at 2:00 p.m. on April 24, 2024. The employer did not appear. Based on the employer’s non-appearance at the agreed upon time, and because the hearing was set with less than 10 days’ notice to the parties, I could only proceed with a hearing at that time if both parties appeared and agreed to proceed. Because the employer did not appear, I did not go forward with the appeal hearing. I told the claimant the hearing would need to be rescheduled with 10-day notice to the parties.

On April 24, 2024, I took the opportunity to explain to the claimant the substance and effect of the reference 01 decision. Despite my earlier attempt to explain the reference 01 decision in an email sent to both parties, Ms. Astor lacked a full understanding of the reference 01 decision. At the end of my explanation of the reference 01 decision, Ms. Astor requested to withdraw the appeal in lieu of having the hearing rescheduled to a later date.

ISSUE:

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

FINDINGS OF FACT:

Ms. Astor is the claimant and the appellant in this matter. When the employer did not appear for the reopened proceeding on April 24, 2024, I offered to explain the reference 01 decision to the claimant, but made clear that the interaction in the absence of the employer would need to be limited to an explanation of the reference 01 decision. After I explained the substance and impact of the reference 01 decision in detail and in the context of the underlying unemployment insurance law, Ms. Astor requested to withdraw the appeal instead of having the matter rescheduled for a later hearing.

Through her appeal of the reference 01 decision, Ms. Astor had hoped to explore filing retroactive weekly claims for the period after March 2, 2024. Ms. Astor said the weekly claim reporting system had blocked her attempt to make weekly claims for the period in question after Ms. Astor made weekly claims for weeks for which she was not eligible for benefits. I explained that the concern about filing retroactive weekly claims was beyond the scope of the appeal matter before me, but agreed to include a remand in any decision I entered in the present matter so that Iowa Workforce Development Benefits Bureau could consider Ms. Astor's request.

Ms. Astor's recorded verbal request to withdraw the appeal occurred in the context of a reopened hearing record and prior to entry of a decision subsequent to the reopening of the record.

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.

I conclude that Ms. Astor's timely, knowing and voluntary request to withdraw the appeal should be approved.

DECISION:

The claimant's request to withdraw the appeal is approved. The March 8, 2024 (reference 01) decision remains in effect.

REMAND:

Pursuant to the claimant's request, this matter is REMANDED to Iowa Workforce Development Benefits Bureau for further action it deems appropriate with regard to the claimant's desire to file retroactive weekly claims for the period after March 2, 2024. The claimant advises the weekly claim reporting system blocked her attempt to make weekly claims for the period in question.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

April 25, 2024
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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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.