

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRYAN O RUTHERFORD**  
Claimant

**APPEAL NO. 11A-EUCU-00575-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 10/26/08  
Claimant: Appellant (2)**

871 IAC 24.2(1)g – Eligibility for Retroactive Benefits  
871 IAC 24.2(1)k – Failure to Report Because of Extraordinary Circumstance

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated June 29, 2011, reference 02, which denied his request for retroactive benefits. After due notice was issued, a hearing was held in Council Bluffs, Iowa, on September 8, 2011. The claimant participated personally. Exhibits A and B were received into evidence.

**ISSUE:**

At issue is whether the claimant is eligible for retroactive benefits because of extraordinary circumstances.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Brian Rutherford opened a claim for unemployment insurance benefits with an original claim date of October 26, 2008. Mr. Rutherford was issued the customary informational brochure that explains the unemployment system and its requirements. The claimant was familiar with the process and had claimed unemployment insurance benefits in the past.

Based upon Mr. Rutherford's separation from Recycling Services LLC in August of 2009, Mr. Rutherford was disqualified from receiving unemployment insurance benefits until he had earned ten times his weekly benefit amount. In October 2009, the claimant was advised by an Iowa Workforce Development representative to come in in December of 2009 and file a new claim and Mr. Rutherford did so. Mr. Rutherford began new employment with Atlantic Steel Erectors in the last week of December 2009 and worked for Atlantic Steel Erectors through January 2010.

During his employment with Atlantic Steel Erectors, Mr. Rutherford noted that taxes were not being deducted from his paycheck and disagreed with his classification by the company as being "contract labor." Mr. Rutherford contacted an attorney and also alerted Iowa Workforce Development that his employment was being mischaracterized as contract work when it was, in fact, "employment." The matter was referred to Iowa Workforce Development's misclassification

department for investigation. Based upon statements made to him by agency personnel, the claimant believed that his wages had been misclassified and that they would be used to establish that he had earned ten times his weekly benefit amount, thus removing the previous disqualification that had been imposed.

Mr. Rutherford was employed by Advance Services, Inc., from March 19, 2010, through May 29, 2010, and was determined, based upon wages that had been earned with Advance Services and credited toward his earning ten times his weekly benefit amount, Mr. Rutherford needed to have an additional \$117.00 credited to his account to meet the requirement that he earn ten times his weekly benefit amount following his separation from Recycling Services, LLC.

After being laid off under non-disqualifying circumstances from Advance Services, Inc., Mr. Rutherford personally visited an Iowa Workforce Development office. The claimant explained to an Iowa Workforce Development employee, who was identified on the record, his belief that remuneration previously earned from Atlantic Steel Erectors would be reclassified and offset the \$117.00 amount that had not been credited toward his meeting the requirement that he earn ten times his weekly benefit amount. The claimant sought advice on how he should claim benefits each week under the circumstances. The claimant was instructed that, in effect, he could not claim benefits each week, as it would be "fruitless." Mr. Rutherford was instead instructed to keep a weekly record of his work searches and did so. Mr. Rutherford believed, based upon the advice that had been given to him by the specified Iowa Workforce Development employee, that he would be subsequently allowed to claim retroactive benefits.

On May 6, 2011, a fact-finder's decision was issued crediting the previous wages earned and finding the claimant had met the requirement that he earn ten times his weekly benefit amount after his separation from Recycling Services, LLC.

Having established that he had met the requirement that he earn times his weekly benefit amount after his separation from Recycling Services, LLC, Mr. Rutherford then made a request to claim retroactive benefits for any weeks of eligibility during the period of June 13, 2010, when he was advised not to file weekly claims, until April 16, 2011. When the claimant attempted to claim retroactive benefits, his request was denied because the claimant had not called the voice response unit each week during the period in question to claim unemployment insurance benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this matter is whether the evidence in the record establishes good cause for failure to claim benefits because of extraordinary circumstances. It does.

871 IAC 24.2(1)g provides:

g. No continued claim for benefits shall be allowed until the individual claiming benefits has furnished to the department a signed Form 60-0151, Claim for Benefits, or filed a voice response continued claim. The biweekly claim for benefit payment shall be mailed not earlier than noon of the second Saturday of the biweekly reporting period and, unless reasonable cause can be shown for the delay, not later than Friday of the week immediately following the biweekly reporting period. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

871 IAC 24.2(1)h(1), (2) and (3) provide:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

h. Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual reports in person at a workforce development center and registers for work in accordance with paragraph "a" of this rule.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

Backdated prior to the week in which the individual reported if the individual presents to the department sufficient grounds to justify or excuse the delay;

There is scheduled filing in the following week because of a mass layoff;

The failure of the department to recognize the expiration of the claimant's previous benefit year;

The individual is given incorrect advice by a workforce development employee;

The claimant filed an interstate claim against another state which has been determined as ineligible;

Failure on the part of the employer to comply with the provisions of the law or of these rules;

Coercion or intimidation exercised by the employer to prevent the prompt filing of such claim;

Failure of the department to discharge its responsibilities promptly in connection with such claim, the department shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of potential rights to benefits, provided, that no such claim may be filed after the 13 weeks subsequent to the end of the benefit year during which the week of unemployment occurred. In the event continuous jurisdiction is exercised under the provisions of the law, the department may, in its discretion, extend the period during which claims, with respect to week of unemployment affected by such redetermination, may be filed.

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating shall not be allowed at the change of the calendar quarter if the backdating would cause an overlap

of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

871 IAC 24.2(1)k provides:

Any individual who is disqualified for benefits because of the individual's failure to report as directed to file a claim following the date specified may appeal to the department for the right to establish good cause for failure to report because of extraordinary circumstances. A representative of the department may deny the request and the decision may be appeal to an administrative law judge for a hearing and a decision on the merits. If the petition is allowed, the petitioner shall be allowed to file a claim for and receive full benefits for each week for which such claim is filed if otherwise eligible.

The evidence in this record establishes that Mr. Rutherford was familiar with the unemployment insurance process and procedures. The claimant was aware that he needed to file a claim each week that he wished to claim unemployment insurance benefits and believed that he was eligible. The claimant had received the informational brochure from workforce development and was familiar with the system, because he had filed claims in the past. Mr. Rutherford was also aware, based upon statements made to him by other Agency representatives, that remuneration paid to him by Atlantic Steel Erectors may well have been "misclassified" as contract work and that the remuneration received from that company would like be reclassified and added to his claim, thus making him eligible for future benefits because he had satisfied the requirement that he earn ten times his weekly benefit amount from a previous disqualification.

When Mr. Rutherford sought advice on how to claim benefits each week under those circumstances, the claimant was, in effect, told that he could not make a claim for benefits because it was "fruitless." The claimant followed the subsequent advice that was given to him by the same specified Iowa Workforce Development employee and kept a detailed record of his work search each week. Later, when the remuneration from Atlantic Steel Erectors was, in fact, reclassified and added to his claim, Mr. Rutherford sought to retroactively claim benefits in the belief that he had followed all instructions given to him and therefore his claim for retroactive benefits would not be denied.

The administrative law judge concludes, based upon the totality of the hearing record in this matter, the claimant failed to claim benefits each week during the period in question because of extraordinary circumstances, the advice he had relied on from a specified workforce development representative. The administrative law judge therefore concludes that the claimant should be allowed to file a claim for the weeks in question and receive full benefits for each week claimed, provided he has satisfied all other eligibility requirements of Iowa law for each of the weeks claimed.

**DECISION:**

The representative's decision dated June 29, 2011, reference 02, is reversed. The claimant's request to file claims for benefits for the period between June 13, 2010, and April 16, 2011, is approved. The claimant shall be allowed to file a claim and receive full benefits for each week that a claim is filed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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