

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA A MCCOMBS
Claimant

APPEAL NO. 11A-UI-16446-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/25/11
Claimant: Appellant (2)**

871 IAC 24.2(1)a & h(1) & (2) – Request to Backdate Claim

STATEMENT OF THE CASE:

Theresa McCombs (claimant) appealed a representative's December 23, 2011 decision (reference 03) that denied a request to backdate the claim for benefits. After a hearing notice was mailed to the claimant's last-known address of record, a hearing was held on February 7, 2012, in Des Moines, Iowa. The claimant was represented by Nicholas Platt, Attorney at Law, and did participate personally in the hearing.

ISSUE:

The issue is whether the claimant's request for retroactive unemployment insurance benefits should be granted.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was separated from employment in late September 2011. The claimant filed her claim for benefits online in a Workforce office with an effective date of September 25, 2011. The Workforce office did not give the claimant any information with regard to filing her claim. On October 13, 2011, a decision was mailed to the claimant indicating she was not eligible to receive unemployment insurance benefits. The claimant appealed the decision. That decision was reversed on December 8, 2011. On December 22, 2011, the claimant asked the Workforce why she was not receiving benefits and learned that she was not receiving benefits because she was not filing each week. The claimant did not know she needed to file for benefits each week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's request to backdate her claim should be allowed.

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.

The claimant was not given the proper information to manage her claim by the Department. The claimant has established sufficient grounds to justify or excuse the delay in establishing her claim for benefits. Her request to backdate her claim to September 25, 2011, is allowed.

DECISION:

The representative's December 23, 2011 decision (reference 03) is reversed. The claimant's request to backdate her claim to September 25, 2011, is allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs