

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON D SCOTT
Claimant

APPEAL NO. 13A-UI-12119-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DAVENPORT COMMUNITY SCHOOL
DISTRICT**
Employer

**OC: 09/15/13
Claimant: Appellant (2)**

871 IAC 24.2(1)a & h(1) & (2) – Backdating
871 IAC 24.2(1)g – Retroactive Benefits

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the October 21, 2013, (reference 04) decision that denied the request to backdate the claim for benefits prior to September 15, 2013. After due notice was issued, a hearing was held by telephone conference call on November 20, 2013. Claimant participated. The employer did not participate. Claimant's Exhibits A through E were entered and received into the record.

ISSUES:

Can the claim for benefits be backdated prior to September 15, 2013?

Is the claimant entitled to retroactive benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits with an effective date of September 15, 2013 and desires to backdate the claim to June 30, 2013. Claimant delayed filing the claim because she was instructed not to do so by her employer. She was told she would not be eligible for benefits so not to bother filing a claim. Based on the employer's representations she did not file her claim or her weekly continuing claim until she learned that others had filed and been awarded benefits based on the employer's misrepresentation about their eligibility.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's request to backdate the claim is granted.

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 misinformation given to the claimant was a good cause reason for her failure to file a claim during her claim during the first week of unemployment. Backdating is granted. Claimant's claim for benefits shall be June 30, 2013.

For the reasons that follow, the administrative law judge concludes the claimant's request for retroactive benefits is granted.

The claimant was told not to file a claim by her employer. Under these circumstances her failure to file weekly continued claims is considered to be with good cause. The claimant is deemed to have filed continuing weekly claims with the week ending July 6, 2013 through August 10, 2013.

DECISION:

The October 21, 2013, (reference 04) decision is reversed. The claimant's request to backdate the claim is granted. The claimant's request for retroactive benefits is granted. The claimant claim is backdated to June 30, 2013 and her request for retroactive benefits for the period from July 6, 2013 through August 10, 2013 is granted.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs