

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CHAD DUSTER**  
Claimant

**APPEAL NO. 14A-UI-03694-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/16/14  
Claimant: Appellant (4)**

871 IAC 24.2(1)a & h(1) & (2) - Backdating

**STATEMENT OF THE CASE:**

Chad Duster (claimant) appealed an unemployment insurance decision dated April 1, 2014, (reference 02), which denied his request to backdate his claim prior to March 16, 2014. After a hearing notice was mailed to the party's last-known address of record, a telephone hearing was held on April 28, 2014. The claimant participated in the hearing.

**ISSUE:**

The issue is whether the claimant's unemployment insurance claim should be backdated.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed a claim for benefits with an effective date of March 16, 2014. He was laid off effective February 28, 2014, and after his separation date, the employer agreed to pay him severance payments or continuation of his base salary for 45 weeks. Presumably the claimant signed a legal contract in exchange for the severance benefits. The claimant did not file for unemployment because he did not believe he was eligible to receive unemployment benefits if he was receiving severance pay.

When an employer pays a settlement amount in an attempt to resolve legal matters, or potential legal matters, between itself and the claimant, the amount paid may be called severance pay but it falls outside the standard definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay. The legal settlement amount is not deductible from the claimant's unemployment insurance benefits under Iowa Code § 96.5(5). It appears the claimant may have received a legal settlement amount.

The claimant learned from someone else that he might be eligible for unemployment benefits and he went to the Workforce office on March 12, 2014, but was advised he needed to make an appointment for the following week. He made an appointment on March 18, 2014, and was able to file his claim for the week beginning March 16, 2014.

**REASONING AND CONCLUSIONS OF LAW:**

Agency rule 871 IAC 24.2(1)h provides that claims for unemployment insurance benefits are ordinarily effective on the Sunday of the calendar week in which the individual files the initial claim. A claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim if he presents sufficient grounds to justify or excuse the delay. 871 IAC 24.2(1)h(2). Sufficient grounds under the statute include delays due to: a mass layoff; incorrect advice by an Agency employee; failure of the Agency to recognize the expiration of the claimant's previous benefit year; failure of the Agency to discharge its responsibilities; an interstate claim against another state which has been determined as ineligible; failure on the employer's part to comply with the law or Agency rules; and coercion or intimidation by the employer to prevent the prompt filing of the claim.

The claimant did not file his claim when he was laid off during the week of March 2, 2014, because he did not know he was eligible. However, he did attempt to file his claim effective March 9, 2014, and was not allowed to do so by the local Workforce office. The claimant has not established sufficient grounds as specified above, to justify or excuse the delay in filing his claim during the first week of unemployment. However, he has presented sufficient grounds to justify his failure to file his claim effective March 9, 2014. Backdating is granted for one week.

**DECISION:**

The unemployment insurance decision dated April 1, 2014, (reference 02), is modified in favor of the appellant. The claimant's request to backdate his claim one week to March 9, 2014, is granted.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs