

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEAN BENGÉ
Claimant

APPEAL NO. 08A-UI-11673-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11-30-08 R: 02
Claimant: Appellant (2)**

871 IAC 24.2(1) A&H (1)&(2) – Backdating Claim

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 15, 2008, reference 01, decision that denied her request to backdate her claim. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 30, 2008. The claimant participated in the hearing.

ISSUE:

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

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 November 30, 2008. She worked as a full-time employee for HOV Service until November 17, 2008, when she became an on-call employee as the employer was experiencing a work slowdown. The employer repeatedly told her it was expecting work to come in soon so the claimant did not file for unemployment insurance benefits right away. She has worked approximately 11 days since November 17, 2008, and has been collecting partial unemployment benefits since November 30, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's request to backdate her claim is 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 fact that the employer continued to tell the claimant it would have work soon, thus preventing her from filing for unemployment insurance benefits as soon as she would have been

eligible, is considered a good cause reason for having failed to file a claim during the first week of unemployment. Consequently, backdating is allowed.

DECISION:

The December 15, 2008, reference 01, decision is reversed. The claimant's request to backdate her claim is allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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