

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SCOTT J BARRY
1044 PATRICIA ANN DR
DUBUQUE IA 52003

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 05A-UI-06051-JTT
OC: 08/01/04 R: 04
Claimant: Appellant (2R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.2(1)(a) & (h)(1) & (2) – Backdated Claim

STATEMENT OF THE CASE:

Scott Barry filed a timely appeal from the June 2, 2005, reference 03, decision that denied his request to backdate his additional claim for benefits to May 8, 2005. After due notice was issued, a hearing was held on June 20, 2005. Mr. Barry participated. The administrative law judge took official notice of the administrative file contents.

FINDINGS OF FACT:

Scott Barry was temporarily laid off from his employment at John Deere during the week of May 8-14. Mr. Barry returned to the employment on Monday May 16. At the time he was laid off, Mr. Barry was unaware that he needed to establish an *additional claim* for benefits. Mr. Barry was under the erroneous belief that the *continued claim* reporting procedure applied. Under this belief, Mr. Barry contacted Workforce Development on Sunday May 15 to report his

employment status for the prior week. The automated telephone response system would not allow Mr. Barry to provide his information. Mr. Barry contacted the Dubuque Workforce Development Center the next day and learned that he had needed to establish an *additional claim* for benefits instead of just providing a weekly report *continuing* an existing claim. Under the circumstances, the Workforce Development representative to whom Mr. Barry spoke indicated that she would go ahead and backdate the claim one week to May 8, 2005. This did not happen.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes an appropriate reason, under 871 IAC 24.2(1)(h)(2), for backdating the claimant's additional claim date. It does.

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)(g), regarding continued claims reporting, states as follows:

No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. 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.

The relevant Workforce Development webpage recommends that claimants contact the Agency between 10:00 a.m., Saturday, through 11:30 p.m., Sunday, to *continue* a claim.

The evidence in the record establishes that Mr. Barry misunderstood the precise nature of his claim for benefits for the week he was temporarily unemployed. The result was that Mr. Barry was one day late in making contact with Workforce Development. Mr. Barry fully intended to comply with Workforce Development requirements and would have been in compliance if his claim had in fact been in the form of a *continued claim* rather than an *additional claim*. As soon as Mr. Barry realized his error, he took immediate steps to address the situation. Under the circumstances, the administrative law judge concludes that Mr. Barry has provided sufficient grounds to justify or excuse the delay. Accordingly, the effective date for Mr. Barry's claim for benefits is backdated to May 8, 2005.

DECISION:

The representative's decision dated June 2, 2005, reference 03, is reversed. The claimant's request to backdate the effective date of his additional claim for benefits to May 8, 2005 is allowed. This matter is remanded for a determination of the claimant's eligibility for benefits based on the backdated claim.

jt/kjw