

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY D DRAKE
Claimant

APPEAL NO. 07A-UI-01549-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/28/07 R: 02
Claimant: Appellant (1)

871 IAC 24.2(1)a & h(1),(2) and (3) – Backdating

STATEMENT OF THE CASE:

The claimant, Larry Drake, filed an appeal from a decision dated February 5, 2007, reference 01. The decision denied his request to backdate his claim for unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 28 2007. The claimant participated on his own behalf.

ISSUE:

The issue is whether the claim may be backdated.

FINDINGS OF FACT:

Larry Drake filed a claim for unemployment benefits with an effective date of January 28, 2007. His last day of work was December 28, 2006, but he did not file his claim for five weeks because he had erroneously assumed he would be returning to work soon. No one on behalf of his employer or Iowa Workforce Development discouraged him from filing his claim prior to the effective date.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.2(1)a provides:

- a. Following separation from work, any individual, in order to establish a benefit year during which the individual may receive benefits because of unemployment shall report in person to the nearest workforce development center which takes claims and shall file an initial claim for benefits and register for work.

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 record does not establish good cause for backdating the claim. Mr. Drake's assumption he would be returning to work in the near future does not constitute good cause to backdate the claim.

DECISION:

The representative's decision of February 5, 2007, reference 01, is affirmed. Larry Drake's request to backdate his claim is denied.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css