

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCIA D ELLINGSWORTH
Claimant

APPEAL NO: 13A-UI-12148-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/08/13
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Marcia D. Ellingsworth (claimant) appealed a representative's October 21, 2013 decision (reference 02) that denied the claimant's request to backdate the claim prior to September 8, 2013. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on November 21. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Should the claimant's request to back date her claim be granted?

FINDINGS OF FACT:

For the period of June 30, 2013 through August 10, 2013 the claimant was not employed under her same hours and wages with Davenport Community School District (employer). She did not establish a claim for unemployment insurance benefits until the week of September 8, 2013. The delay in filing the claim was due to information the claimant had received regarding not being eligible to receive unemployment insurance benefits for the period in question.

Prior to June 28, 2013 the claimant had worked on a calendar year basis; her contract provided for working 230 days per week. She had always worked through the period between the end of the spring academic term and the start of the fall academic term, during the traditional academic "summer break." In about April 2013 the employer announced that not all para-educators would be kept on as calendar year employees, but that some would be reduced to academic year employees, working 187 days per year. In May the claimant learned that she would be one of the para-educators who would be reduced to 187 days. As a result, the claimant's last day of work before being off between the academic terms was June 28, 2013. She then returned to employment on August 12, 2013.

The employer had informed the claimant's union that the para-educators who were no longer going to be working over the "summer break" that they would not be entitled to unemployment insurance benefits for that period, and the union representative had conveyed that information

to the claimant. The claimant had spoken to an Agency representative directly and had also been told that there would not be eligibility. Therefore the claimant did not seek to establish a claim for unemployment insurance benefits after her last day of work on June 28. When the claimant returned to working on August 12, she learned that some similarly situated coworkers had gone ahead and filed for unemployment insurance benefits, and had been awarded benefits. After further consultation with other coworkers, the claimant then did establish a claim for benefits effective September 8, 2013.

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. For good cause, a claim may be backdated. The reason the claimant failed to file an earlier unemployment insurance claim was because the employer provided information to the claimant's union representative which prevented the claimant from promptly filing a claim, and the claimant relied on incorrect advice given to a similarly situated coworker by an Agency employee. These are recognized as good cause to justify or excuse the delay in filing the claim. Backdating to June 30 is allowed.

DECISION:

The representative's October 21, 2013 decision (reference 02) is reversed. The claimant's request to backdate her claim to June 30 is granted.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs