

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN T BREZOVAN
Claimant

APPEAL NO. 08A-UI-10284-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/06/08 R: 02
Claimant: Appellant (1)

871 IAC 24.2(1)a & h(1) & (2) – Request to Backdate Claim

STATEMENT OF THE CASE:

John Brezovan (claimant) appealed a representative's October 30, 2008 decision (reference 01) that denied his request for retroactive benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on November 19, 2008. The claimant did participate.

ISSUE:

The issue is whether the claimant's request for retroactive unemployment insurance benefits should be granted.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was laid off on November 28, 2007. The claimant received severance pay through June 16, 2008. He filed for unemployment insurance benefits with an effective date of April 6, 2008. When the severance pay ended, the claimant started receiving unemployment insurance benefits. The claimant heard that other employees received severance pay and unemployment insurance benefits. The claimant did not know you could file for unemployment insurance benefits while receiving severance pay. He would like to backdate his claim to January 2008, so he could receive both severance pay and unemployment insurance benefits from January to April 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's request for retroactive benefits should be denied.

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 claimant did not know you could file for unemployment insurance benefits while receiving severance pay. The claimant has not established sufficient grounds to justify or excuse the delay in establishing his claim for benefits. His request to backdate his claim to January 2008 is denied.

DECISION:

The representative's October 30, 2008 decision (reference 01) is affirmed. The claimant's request to backdate his claim to January 2008 is denied.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw