

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELINDA S ASWEGAN
Claimant

APPEAL NO. 10A-UI-04970-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL RESERVE BANK – DES MOINES
Employer

OC: 03/01/09
Claimant: Appellant (2)

871 IAC 24.2(1)g – Retroactive Benefits
871 IAC 24.2(1)a & h(1) & (2) – Backdating
Iowa Code § 96.5(5) – Severance Pay
Iowa Code § 96.5(7) – Vacation Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 22, 2010 (reference 01) decision that denied the request to backdate the claim, acknowledged reporting of vacation and severance pay for the period from May 23, 2009 through February 13, 2010, and allowed benefits for the three weeks ending March 6, 2010. After due notice was issued, a telephone conference hearing was held on May 10, 2010. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant is entitled to retroactive benefits from October 25, 2009 through March 6, 2010 after full reporting of vacation and severance pay for the 34 weeks ending October 24, 2009.

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 March 1, 2009 so the issue is not whether she wishes to backdate the claim prior to the separation date of March 3, 2009, but if she is entitled to retroactive benefits for the period from October 25, 2009 through March 6, 2010 when she continued reporting vacation and severance pay beyond the 34th and final week of pay through October 26, 2009 based upon her separation date of March 3, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's request for retroactive benefits is granted.

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.

Since claimant properly filed all weeks of claims through the end of the claim year and reported the full amount of vacation and severance pay, her mistake of continuing to report that pay beyond the final payment date of October 26, 2009 is not fatal to her request for retroactive benefits.

DECISION:

The March 22, 2010 (reference 01) decision is reversed. The claimant's request for retroactive benefits is granted for the period from October 25, 2009 through March 6, 2010.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs