

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A LABARGE
Claimant

APPEAL NO. 14A-UI-02499-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/05/14
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Scott LaBarge filed a timely appeal from the February 28, 2014, reference 01, decision that denied his request to backdate his claim to a date prior to January 5, 2014. After due notice was issued, a hearing was held on March 28, 2014. Mr. LaBarge participated and presented additional testimony through Pam LaBarge. The administrative law judge took official notice of the agency's administrative file (DBRO and KCCO). The administrative law judge also took official notice of a record of contact between the claimant and a Workforce Advisor on February 27, 2014. Exhibit A was received into evidence.

ISSUE:

Whether Mr. LaBarge has presented sufficient grounds to justify or excuse the delay in filing for benefits through Iowa Workforce Development and whether good cause exists to backdate the claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Scott LaBarge established an Iowa claim for unemployment insurance benefits that was deemed effective January 5, 2014. Ms. LaBarge established the claim in response to a Friday, December 27, 2013 temporary layoff from his full-time employment with Epic Construction. On Monday, December 30, 2013, the employer, which had recently relocated from Iowa to Wisconsin, told Mr. LaBarge that he needed to file for unemployment insurance benefits in Wisconsin. Mr. LaBarge was and is a Wisconsin resident. On December 30 or 31, 2013, Mr. LaBarge attempted, unsuccessfully, to file a Wisconsin claim for unemployment insurance benefits. During the week that started January 5, 2014, the employer instructed Mr. LaBarge that he should have filed his claim in Iowa. During that same week, Ms. LaBarge took steps to establish an Iowa claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence indicates sufficient grounds to justify or excuse the delay in filing for benefits through Iowa Workforce Development and whether good cause exists to backdate the claim for benefits.

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 evidence indicates that the employer gave Mr. LaBarge erroneous instructions to establish a claim for benefits in Wisconsin and that Mr. LaBarge reasonably relied upon those instructions. The employer's erroneous instructions were the sole basis for Mr. LaBarge's failure to establish an Iowa claim for benefits during the benefit week that started December 29, 2013. During the week that started January 5, 2014, the employer altered its instructions to Mr. LaBarge and directed him to file his claim in Iowa instead. Mr. LaBarge immediately took steps to establish an Iowa claim for benefits. The administrative law judge concludes good cause does exist to backdate the claim to December 29, 2013 and that Mr. LaBarge has presented sufficient grounds to justify or excuse delay in filing for benefits.

DECISION:

The Claims Deputy's February 28, 2014, reference 01, decision is reversed. The claimant has presented sufficient grounds to justify or excuse the delay in filing for benefits. Good cause exists to backdate the claim for benefits to December 29, 2013. The claimant's request to backdate the claim is granted.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs