

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC MOUSCARDY
Claimant

APPEAL NO: 12A-UI-11908-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/12/12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Eric Mouscardy (claimant) appealed an unemployment insurance decision dated October 2, 2012, reference 05, which denied his request to backdate his claim prior to August 12, 2012. After a hearing notice was mailed to the party's last-known address of record, a hearing was held on October 23, 2012. The claimant participated in the hearing. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's unemployment insurance claim should be backdated.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed a claim for benefits with an effective date of August 12, 2012. He was discharged from Nike on May 11, 2012 and petitioned to get his job back. The claimant was reinstated on July 8, 2012 without back pay and he assumed he would be given back pay when he was reinstated. He was subsequently discharged and filed for benefits at that time. The claimant wants to backdate his claim to when he was initially discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant's request to backdate his claim should be granted. For the reasons that follow, the administrative law judge concludes the claimant's request to backdate his claim is 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 failed to file a claim during his first week of unemployment because he believed he would be reinstated with back pay. He was reinstated but received no back pay and was subsequently discharged. The claimant has not established sufficient grounds to justify or excuse the delay in filing his claim during the first week of unemployment. Backdating is denied.

DECISION:

The unemployment insurance decision dated October 2, 2012, reference 05, is affirmed. The claimant's request to backdate his claim is denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs