

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA D CARMENATTE**  
Claimant

**APPEAL NO: 11A-UI-06201-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 05/09/10  
Claimant: Appellant (2)**

871 IAC 24.2(1)g – Retroactive Benefits

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 29, 2011 determination (reference 14) that denied her request for retroactive benefits for the weeks ending December 25, 2010, to February 12, 2011. The claimant participated in the hearing with her attorney, Nicholas Platt. Ike Rocha interpreted the hearing.

An issue of timeliness of appeal was list as an issue on the hearing notice. The record clearly shows the claimant's appeal was faxed by her attorney on April 7, 2011, or before the April 8, 2011 deadline to appeal. Prior to the hearing, the administrative law judge informed Mr. Platt that timeliness was not an issue, but the issue mistakenly remained on the hearing notice. Based on the administrative record, the claimant established that she filed a timely appeal. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge grants the claimant's request for retroactive benefits.

**ISSUE:**

Should the claimant's request for retroactive benefits for the weeks ending December 25, 2010, through February 12, 2011, be granted?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of May 9, 2010. In August 2010, the claimant's physician released her to return to work. In August 2010, the claimant received permanent disability benefits, but the Department understood she was receiving temporary total disability benefits from a workers' compensation claim.

On or about December 23, 2010, a representative talked to the claimant and told her that because she had received temporary total disability benefits, she would not be eligible to receive unemployment insurance benefits for a while. The representative also told the claimant she would receive a letter from the representative when she was again eligible to receive benefits and could start filing her weekly claims again. A representative's determination

(reference 07) was mailed to the claimant on or about December 24, 2010 that verified in writing what the representative told her.

On January 10, 2011, a representative sent the claimant a determination (reference 10) that stated she was eligible to receive benefits because she was currently receiving workers' compensation benefits for a permanent disability. The claimant did not receive a letter from the representative indicating she was again eligible to receive unemployment insurance benefits until mid-February. The claimant reopened her claim for benefits during the week of February 13, 2011. She then started filing weekly claims and requested retroactive benefits for the weeks ending December 25, 2010, through February 12, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

When a claimant submits a claim by voice mail response, the claimant must call in on a weekly basis not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period. 871 IAC 24.2(1). The evidence indicates a representative told the claimant during the week ending December 25, 2010 she was not eligible to receive benefits and would not be eligible for a while because she was receiving temporary total disability benefits. The representative also told the claimant she would receive a letter from the representative telling her when she was again eligible to receive benefits and could file weekly claims. The claimant waited for the representative's letter, which she received in mid-February. After the claimant received the letter, she reopened her claim, started filing weekly claims and requested retroactive benefits for the weeks the representative had previously told her she was not eligible to receive. Before the claimant received the representative's letter indicating she was again eligible to receive benefits, the Department recognized the claimant was receiving permanent disability benefits, not temporary total benefits. The January 10, 2011 determination did not, however, indicate the date the claimant was eligible to receive unemployment insurance benefits. Based on the claimant's reliance on the representative's instructions in December, her request for retroactive benefits for the weeks ending December 25, 2010, through February 12, 2011, is granted.

**DECISION:**

The representative's March 29, 2011 determination (reference 14) is reversed. The claimant established good cause for not timely filing weekly benefits for the weeks ending December 25, 2010, through February 12, 2011. Her request for retroactive benefits is granted.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs