

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**KRISTINA A JESCHKE
201 SOUTH PO BOX 4
ROWLEY IA 52329**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-00766-DT
OC: 12/25/05 R: 03
Claimant: Appellant (2/R)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Kristina A. Jeschke (claimant) appealed a representative's January 17, 2006 decision (reference 02) that denied the claimant's request to backdate the claim prior to December 25, 2005. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on February 7, 2006. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant's last day of work was November 17, 2005. She called in sick on November 18, 2005. She offered to return to work on November 21, 2005, but the employer directed her to

stay off work until she was fully recovered from a parasitic illness, because the employer was concerned that the claimant might be contagious. Her doctors had not advised her that she was contagious or that she needed to stay off work. One of the employer's owners assured her that her job would be waiting for her until her return, so the claimant did not file a claim for unemployment insurance benefits or seek new employment.

Between November 21 and December 20, 2005, the claimant rested and did seek further medical treatment, including some treatment out of state. On December 20, the other owner of the employer called the claimant and informed her that she was considered separated from employment as of November 18, 2005. Therefore, the claimant established a claim for unemployment insurance benefits effective December 25, 2005. She began a search for work at that time, and obtained new employment which she began January 11, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant's claim should be backdated.

Agency rule 871 IAC 24.2(1)h provides that claims for unemployment insurance benefits are ordinarily effective on the Sunday of the calendar week in which the individual files the initial claim. For good cause, a claim may be backdated. The administrative law judge finds good cause in her reliance on the employer's assertion that if she stayed off work even though she felt well enough to work, her job would be held for her. By this representation, the employer effectively prevented the claimant from promptly filing a claim. The claim should be backdated to November 20, 2005.

An issue as to whether the claimant was able and available for new employment during each of the weeks from November 20 through December 24, 2005 arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's January 17, 2006 decision (reference 02) is reversed. The claimant's request to backdate her claim to November 20, 2005 is allowed. The matter is remanded to the Claims Section for investigation and determination of the able and available issue.

ld/pjs