

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK C MORIARTY
Claimant

APPEAL 17A-UI-06017-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE CEC – DUBUQUE WORKS
Employer

**OC: 08/07/16
Claimant: Appellant (1)**

Iowa Code § 96.6(1) – Filing Claims
Iowa Admin. Code r. 871-24.2(1)a & h(1) & (2) – Backdating

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 5, 2017 (reference 02) decision that denied the request to backdate the claim for benefits prior to May 14, 2017. After due notice was issued, a hearing was scheduled to be held by telephone conference call at 9:00 a.m. on June 28, 2017. Claimant Mark C. Moriarty participated. The employer, John Deere CEC – Dubuque Works, did not register a telephone number at which to be reached and did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

May the claimant backdate the claim prior to May 14, 2017?

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 August 7, 2016. The administrative record shows that claimant reopened his claim effective April 23, 2017, and has an additional date of May 14, 2017. Claimant desires to backdate the claim to May 7, 2017.

Claimant testified that he was initially laid off for the one-week period ending April 29, 2017. He believes that this was the week for which he has not received benefits. Claimant testified that he went into his local office the Sunday or Monday after that week and was told he should have filed his claim the week prior. He returned to work for the one-week period ending May 6, 2017, after which he was laid off again for the one-week period ending May 13, 2017. Claimant believes he correctly filed his claim for his second one-week layoff. Claimant explained that the employer used to file unemployment claims for the employees, and it no longer does this. Therefore, he is not well-versed in the process of filing and reopening his claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's request to backdate the claim is denied.

Iowa Code § 96.6(1) provides:

1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

Iowa Admin. Code r. 871-24.2(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 a 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 *Unemployment Insurance Benefits Handbook*, provides in pertinent part at page 13-14:

CLAIM EFFECTIVE DATE

The effective date of all UI claims, regardless of filing method, will be the Sunday of the week in which the application was filed.

and

REACTIVATING A CLAIM

An individual can start and stop claiming weekly benefits as many times as necessary during the benefit year. This is called a break in reporting status. Any break in reporting requires the individual to file another initial claim application during the week they want to start collecting benefits again.

The *Unemployment Insurance Benefits Handbook*, provides in pertinent part at page 9:

FILING WEEKLY CLAIMS

To request UI benefit payments during weeks of unemployment, individuals must certify they:

- are currently unemployed or working reduced hours
- are able to work and available for work
- have not refused any job offers or referrals to a job
- are actively looking for work (unless waived)
- are reporting any pay or pension payment received

WHEN TO FILE

The current week is the week that just ended on Saturday. Individuals are strongly encouraged to file their weekly claims between the hours of 9:00 a.m. Saturday through 11:30 p.m. Sunday. Failing to do so can potentially delay benefits.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In

determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant did not provide credible testimony regarding his attempts to file for benefits. The administrative record contradicts claimant's testimony, and the administrative record is a source whose accuracy may not reasonably be questioned. Iowa R. Evid. 5.201.

The evidence shows claimant successfully reopened his claim for one week in April 2017. He has not presented any credible explanation for his failure to successfully file for benefits two weeks later. While the administrative law judge understands that claimant was not held responsible for filing his own claims for benefits for years, the administrative record shows he could successfully navigate the system, reopen his claim, and file for benefits. Therefore, backdating is denied.

DECISION:

The June 5, 2017 (reference 02) decision is affirmed. The claimant's request to backdate the claim to May 7, 2017, is denied.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn