

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NATHAN A VANSCHEPEN**  
Claimant

**APPEAL 18A-UI-00583-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 12/03/17**  
**Claimant: Appellant (1R)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.6(1) – Filing Claims  
Iowa Admin. Code r. 871-24.2(1)h(1), (2) – Backdating

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 21, 2017, (reference 01) unemployment insurance decision that denied the request to backdate the claim for benefits. After due notice was issued, a hearing was scheduled and held by telephone conference call on February 7, 2018. The claimant participated personally. Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**Note to claimant:** Additional information about food, housing, and other resources, as referenced in the hearing, can be found by dialing 211 or at [www.211iowa.org](http://www.211iowa.org).

**ISSUES:**

Is the appeal timely?  
May the claim be backdated?

**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 December 3, 2017, with a reopened claim effective December 17, 2017.

The claimant opened his claim in response to a layoff effective December 1, 2017. He then failed to complete his weekly continued claims for the period of December 3, 2017 through December 16, 2017. The issue of whether the claimant should be eligible for retroactive benefits has not yet been addressed by the Benefits Bureau.

The department has not failed to recognize the expiration of the claimant's previous benefit year and there is not an interstate claim against another state which has been determined as ineligible.

An initial decision denying the request to backdate the claim was mailed to the claimant on December 21, 2017. He received the decision within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 31, 2017. Because December 31, 2017 was a Sunday, the final day to appeal was extended to January 2, 2018. The appeal was not filed until January 11, 2018 (Department Exhibit D-1), which is after the date noticed on the unemployment insurance decision.

The claimant stated he took his denial decision within the appeal period to the Mason City office upon receiving it and requested assistance in filing an appeal. He completed the appeal form as directed by the female IWD representative and was informed the appeal would be sent to the Appeals Bureau for him. No such appeal was received. When the claimant called to check on the status of his appeal, he learned it had not been received and re-filed it on January 11, 2018.

#### **REASONING AND CONCLUSIONS OF LAW:**

**The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.**

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant credibly testified he made a good faith effort to file an appeal in a timely manner but it was not received. He believed it had been filed based upon the assistance and communication with an IWD representative at the Mason City office. Immediately upon receipt of information to that effect, a second appeal was filed (Department Exhibit D-1). Therefore, the appeal shall be accepted as timely.

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

Iowa Code section 96.6(1) provides:

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

Effective Wednesday, July 12, 2017, for claims effective July 16, 2017:

Iowa Admin. Code r. 871-24.2(1)h(1) and (2) 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 files a claim for benefits.

(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:

1. The failure of the department to recognize the expiration of the claimant's previous benefit year;
2. The claimant filed an interstate claim against another state which has been determined as ineligible.

While the claimant has presented reasons for backdating that would may have previously been considered "sufficient grounds" to grant the request, after an agency and legislative rulemaking process, effective July 12, 2017, Iowa Admin. Code r. 871-24.2(1)h(1) and (2) allows backdating for only the two reasons cited above. Neither of those reasons applies in this case. Accordingly, the backdating request must be denied.

**REMAND:** The issue of whether the claimant should be eligible for retroactive benefits for the period of December 3, 2017 through December 16, 2017 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The December 21, 2017, (reference 01) unemployment insurance decision is affirmed. The appeal is timely. The claimant's request to backdate the claim is denied. **REMAND:** The issue of whether the claimant is eligible for retroactive benefits for the period of December 3, 2017 through December 16, 2017 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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