

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID F SOWERS**  
Claimant

**APPEAL NO. 11A-UI-15268-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 10/23/11  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the November 18, 2011 (reference 02) decision that denied the request to backdate the claim for benefits prior to October 23, 2011. After due notice was issued, a hearing was held by telephone conference call on January 3, 2012. Claimant participated.

**ISSUE:**

The issue is whether claimant can backdate the claim prior to October 23, 2011.

**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 October 23, 2011 and desires to backdate the claim to May 15, 2011. Claimant delayed filing the claim because the employer said on May 20 he would allow claimant to work for him as an independent contractor and earn commissions even though he was being discharged as an employee. Claimant later found out from colleagues that the employer set up this arrangement in an attempt to avoid potential liability for unemployment insurance benefits charges to his account. He later found out the second week in October that he was not considered an independent contractor. He had been searching for work since his separation.

**REASONING AND CONCLUSIONS OF LAW:**

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

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.

Misrepresentation from the employer about his employment relationship and eligibility for unemployment insurance benefits is considered a good-cause reason for having failed to file a claim during the first week of unemployment. Backdating is allowed.

**DECISION:**

The November 18, 2011 (reference 02) decision is reversed. The claimant's request to backdate the claim to May 15, 2011 is allowed.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw