

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES R GARDNER
Claimant

APPEAL 16A-UI-08375-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/15/15
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
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 July 28, 2016, (reference 02), unemployment insurance decision that denied benefits based upon not being able to or available for work. After due notice was issued, a telephone conference hearing was scheduled to be held on August 18, 2016. Claimant participated with his supervisor Tiffin Kunath and human resources representative Nicole Cook. The parties waived fact-finding and notice of the backdating request issue.

ISSUES:

Is the claimant able to work and available for work effective July 10, 2016?
Should the claim be backdated prior to July 10, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was out of town from Friday, July 8 through Monday, July 11, 2016, for a funeral but was available for the majority of the work week during an inventory shutdown from July 10 through July 23, 2016, and filed his weekly continued claims for those two weeks. He was not paid vacation or paid time off (PTO) for that time.

On January 4 an IWD division administrator sent e-mail to employers prohibiting companies from filing claims for employees. The employer sent that information verbally and in writing via e-mail to supervisors the week of January 11, 2016. As a non-supervisor, claimant did not have e-mail. His supervisor Kunath passed the information along to employees in a training session and passed out an informational sheet. She does not have a record of whether or not claimant participated in that training. Because the information for new filing procedure was not provided to claimant he was unaware the employer would no longer file claims for him during layoff

periods and did not file an additional or weekly continued claims during a company shut-down from July 24 through August 6, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work effective July 10, 2016.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Because the report indicating claimant was not able to or available for work for the week at issue was due to a keyboarding error, claimant is considered able to and available for work. Accordingly, benefits are allowed.

The administrative law judge further concludes the claimant's request to backdate the claim is granted.

Iowa Code § 96.6(1) provides:

Filing — determination — appeal.

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) 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 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.

Claimant has presented good cause to backdate the claim to July 24, 2016, because the employer did not provide information that it would not process the claim as it had in the past. Backdating is allowed.

DECISION:

The July 28, 2016, (reference 02) unemployment insurance decision is reversed. The claimant was available for the majority of the work week ending July 23, 2016.

Additionally, his request to backdate the claim to July 24, 2016, is granted, as are the retroactive benefits for the two weeks-ending August 6, 2016.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs