

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHELLI A OFF
Claimant

APPEAL 15A-UI-13093-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/18/15
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
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 an appeal from the October 30, 2015 (reference 02) decision that denied the request to backdate the claim for benefits prior to October 18, 2015. After due notice was issued, a hearing was scheduled to be held by telephone conference call on December 28, 2015. Claimant participated. Attorney Marlon Mormann participated on behalf of claimant. Claimant properly waived the notice requirements for the addition of the proper Code Sections (96.6(2) and 96.6(1)).

ISSUES:

Is the appeal timely?

Can the claimant backdate the claim prior to October 18, 2015?

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 18, 2015 and desires to backdate the claim to September 27, 2015. Claimant delayed filing the claim because she thought the employer would allow her to work but it became apparent to her that it would not allow her to work. Claimant attempted to file her claim in person on October 12, 2015 but the Iowa Workforce office was closed for Columbus Day. Claimant then filed her claim online through her phone on October 12, 2015; however, her claim was not properly processed. Claimant did not realize her claim was not properly processed until later that week when she tried to report her job searches. On October 22, 2015, claimant went to an Iowa Workforce office and a worker helped her file her claim. The worker informed claimant that the system was having problems processing claims that are filed by people using their phones to file online.

A denial to backdate claimant's claim was mailed to the claimant's last known address of record on October 30, 2015. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by November 9, 2015. The appeal was not filed until November 11, 2015; which was after the date noticed on the unemployment insurance decision. Claimant testified she did not receive the unemployment insurance decision until November 11, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes claimant's appeal was timely.

Iowa Code § 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, subsection 10, 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 ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. However, claimant testified she did not receive the unemployment decision until November 11, 2015. Claimant filed her appeal immediately upon receiving the decision, therefore, this administrative law judge finds claimant's appeal as timely filed.

For the reasons that follow, the administrative law judge concludes the claimant's request to backdate the claim is granted; however, the claim should only be backdated to October 11, 2015.

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 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.

The IWD Unemployment Insurance Benefits Handbook indicates a claim effective date is the Sunday of the week in which the application was filed. Claimant attempted to file her claim through her phone on October 12, 2015. Claimant did not realize that her claim was not processed correctly until later that week. Claimant was not able to speak to anyone at Iowa Workforce Development on the phone until October 19 or 20, 2015 and was then told to refile her claim. On October 22, 2015, claimant went to an Iowa Workforce Development office and her claim was properly filed. Claimant was told on October 22, 2015, that there were problems when people tried to file claims through their phone. A problem with the system when filing a claim through a person's phone is not attributable to claimant. However, claimant's failure to file a claim prior to October 12, 2015 was a personal decision. Backdating is allowed to October 11, 2015.

DECISION:

The October 30, 2015 (reference 02) decision is reversed. Claimant's request to backdate the claim to October 11, 2015 is granted; as are the retroactive benefits for the same time period, if claimant is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

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