

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVELYN M CARDENAS
Claimant

APPEAL NO. 11A-UI-14180-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/02/10
Claimant: Appellant (4-R)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 26, 2011, reference 06, which denied the claimant's request to backdate her claim. After due notice, a telephone conference hearing was scheduled for and held on November 29, 2011. The claimant participated. The record consists of the testimony of Evelyn Cardenas and the appeal letter dated October 27, 2011. Official notice is taken of agency records.

ISSUE:

Whether the claimant should be allowed to backdate her claim.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant established an original claim for benefits with an effective date of May 2, 2010. The claimant received unemployment insurance benefits through the week ending November 6, 2010. The claimant then received emergency unemployment compensation benefits for the week ending February 19, 2011, through the week ending August 6, 2011. The claimant failed to file for benefits until the week ending September 17, 2011. When she tried to file online on September 16, 2011, she was told there was an "error," with no explanation on what that error was. She continued to get error messages through September 25, 2011. On September 30, 2011, she was told that because there was a break in reporting, she needed to go to her local office.

The claimant immediately called her local office and was told to come to the office on October 3, 2011. She was informed that she needed to file a new claim and that she could have her claim backdated as long as she had proof of job searches. The claimant tried to file online on October 8, 2011, and was told she had to contact her local office. She was assured that the claim was still processing. She still could not file on the weekend of October 14, 2011. Another workforce advisor contacted Des Moines for the claimant. The problem was still not corrected by October 19, 2011. On October 20, 2011, the claimant went to the local office again and the claim that had been re-filed on October 3, 2011, was discovered. The claimant was asked for

proof of wages and job searches and the claimant gave the local office the requested information. The claimant was eventually paid for the week ending October 22, 2011.

REASONING AND CONCLUSIONS OF LAW:

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.

The testimony from the claimant established that the agency did not discharge its responsibilities promptly with regard to the claimant's claim. The claimant was first told that she could not file her claim online, with no explanation, and then told she must report to her local office due to a break in reporting. Despite numerous phone calls and visits to the local office, the claimant was not able to file her claim online and was not able to re-establish her benefits until the week ending October 22, 2011. The administrative law judge concludes that the claimant's claim should be backdated to the week ending September 17, 2011, which is when the online system first informed the claimant that there was an "error" with her claim. The claimant made numerous attempts to file her claim and complied with all advice given to her by agency employees.

The claimant told the administrative law judge that she wants any benefits due her because her claim is being backdated to be applied to her overpayment. This matter is remanded to the Claims Section to both backdate the claim to the week ending September 17, 2011, and to apply any amounts due and owing the claimant to her overpayment.

DECISION:

The representative's decision dated October 26, 2011, reference 06, is modified in favor of the claimant. The claimant's claim is backdated to the week ending September 17, 2011. Any amounts due and owing the claimant shall be applied to her overpayment.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw