

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK L FRANCIS
Claimant

APPEAL 17A-UI-08751-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/23/17
Claimant: Appellant (1)

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:

Claimant filed an appeal from the August 7, 2017, (reference 02) unemployment insurance decision that denied the request to backdate the claim for benefits prior to July 23, 2017. After due notice was issued, a hearing was scheduled to be held by telephone conference call on September 15, 2017. Claimant participated. Department's Exhibit D-1 was received into evidence.

ISSUE:

Is the appeal timely?

May the claim be backdated prior to July 23, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance decision denying claimant's request to backdate his claim was mailed to 280 7th Place, Apt. 201, in North Sioux City, South Dakota on August 7, 2017. At the time of the hearing claimant indicated, his actual address was 28 Pheasant Place, Apt 201, In North Sioux City, South Dakota. According to claimant he never received a copy of the decision denying his request to backdate, as his address was entered incorrectly. Claimant did not learn about the decision until August 24, 2017, when he called to check on the status of his request. Claimant was advised to go to a local office to file his appeal, which he did the following day.

The claimant filed a claim for benefits with an effective date of July 23, 2017, and desires to backdate the claim to July 16, 2017. Claimant did not file his claim prior to the week of July 23 because, based on his prior experience in other states, he was of the understanding that he was required to wait a week prior to filing. 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.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant did not learn about the decision denying his request to backdate the claim until August 24, 2017, when he called to check on the status of his request. The claimant filed an appeal within a reasonable period of time after discovering the his request to backdate the claim was denied. Therefore, the appeal shall be accepted as timely.

The next issue to be decided is whether the claim can be backdated. For the reasons that follow, the administrative law judge concludes the claimant's request to backdate the claim is 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.

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.

The October 2016, *Unemployment Insurance Benefits Handbook*, provides in pertinent part at pages 13 and 14:

CLAIM EFFECTIVE DATE

The effective date of all UI claims, regardless of filing method, will be the Sunday of the week in which the application was filed.

and

REACTIVATING A CLAIM

An individual can start and stop claiming weekly benefits as many times as necessary during the benefit year. This is called a break in reporting status. Any break in reporting requires the individual to file another initial claim application during the week he/she wants to start collecting benefits again. Any employment during the break must be reported.

It is understandable that the claimant may have been confused about the differences between requirements in other states or difference in Iowa between filing a new, additional or reopened claim, which must be done by the close of business on Friday of the week the unemployment begins, and filing of weekly continued claims to report work searches and availability for work, that may not begin until Saturday of the week of unemployment, even though filing of both types of claims is done online.¹ 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.

¹ Effective October 7, 2017, the first day of the week you can report a weekly claim is 8:00 a.m. on the Sunday after the prior week has ended, meaning after October 7, 2017, you can no longer file weekly claims on Saturday of any week. Beginning October 7, weekly claims must be filed Sunday through Friday for the prior week only.

DECISION:

The August 7, 2017, (reference 02) unemployment insurance decision is affirmed. The appeal is timely. The claimant's request to backdate the claim is denied.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs