

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK L BOEHMKE**  
Claimant

**APPEAL NO. 13A-UI-00211-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 01/13/13**  
**Claimant: Appellant (1)**

871 IAC 24.2(1)a & h – Request to Backdate Claim  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

Mark L. Boehmke filed a timely appeal from an unemployment insurance decision dated January 2, 2014, reference 01, that denied the claimant's request to backdate his claim for benefits prior to December 29, 2013. A telephone hearing was scheduled for January 30, 2014. The claimant, the appellant herein, did not respond to the notice of hearing. Based upon the appellant's failure to participate in the hearing, the administrative file and the record, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

At issue in this matter is whether the decision previously entered should be affirmed.

**FINDINGS OF FACT:**

The party was properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 claimant has supplied no good-cause reason for failing to backdate his claim prior to December 29, 2013. In his statement to Iowa Workforce Development the claimant had stated no good-cause reasons for backdating his claim.

The evidence in the record establishes that Mr. Boehmke was aware of the requirement that he file a timely claim for benefits. The claimant's failure to file a claim was not due to any reasons authorized by 871 IAC 24.2(1)a & h and (1), (2) and (3).

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

Mr. Boehmke was properly notified of the scheduled hearing on this appeal. Based upon the claimant's failure to provide a telephone number at which he could be reached for the hearing, his failure to participate in the hearing or to request a postponement as required by the hearing notice, the administrative law judge concludes based upon the contents in the administrative file that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

#### **DECISION:**

The representative's decision dated January 12, 2014, reference 01, is affirmed. The decision denying the claimant's request to backdate his claim prior to December 29, 2013 is denied. This decision will become final with 15 days unless the claimant makes a written request to the administrative law judge that the hearing be re-opened, explaining the good-cause reason for

preventing the appellant from participating in the hearing at its scheduled time or filing an appeal with the Employment Appeal Board within 15 days of the date of this decision.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css