

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONALD FOSTER
Claimant

DEE ZEE INC
Employer

APPEAL 17A-UI-08011-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/09/17
Claimant: Appellant (4)

Iowa Code § 96.6(1) – Filing Claims
Iowa Admin. Code r. 871-24.2(1)h(1) & (2) – Backdating
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 2, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to and available for work effective July 9, 2017. The parties were properly notified of the hearing. A telephone hearing was held on August 24, 2017. The claimant, Donald Foster, participated, and witness Metheeny Saychareun testified on claimant's behalf. The employer, Dee Zee, Inc., participated through Sarah Tew, HR Specialist.

ISSUE:

May the claim be backdated prior to July 9, 2017?
Is the claimant able to work and available for work effective July 9, 2017?

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 July 9, 2017, and desires to backdate the claim to July 2, 2017. The employer was shut down for one week effective July 2, 2017, and claimant was placed on a one-week layoff at that time. Claimant had never filed for unemployment insurance benefits in the past. He spoke with coworkers, who told him that he had until July 15, 2017, to file a claim for benefits. Claimant returned to work the week of July 9, 2017, and he is not seeking benefits for that week or any subsequent weeks at this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's request to backdate his claim to July 2, 2017, is granted. Claimant was not available for work effective July 9, 2017.

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 a 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 *Unemployment Insurance Benefits Handbook*, provides in pertinent part at page 13-14:

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 they want to start collecting benefits again.

The *Unemployment Insurance Benefits Handbook*, provides in pertinent part at page 9:

FILING WEEKLY CLAIMS

To request UI benefit payments during weeks of unemployment, individuals must certify they:

- are currently unemployed or working reduced hours
- are able to work and available for work
- have not refused any job offers or referrals to a job
- are actively looking for work (unless waived)
- are reporting any pay or pension payment received

WHEN TO FILE

The current week is the week that just ended on Saturday. Individuals are strongly encouraged to file their weekly claims between the hours of 9:00 a.m. Saturday through 11:30 p.m. Sunday. Failing to do so can potentially delay benefits.

Effective July 12, 2017, for claims effective July 16, 2017, the Iowa Administrative Code allows for backdating for only two reasons: failure of the department to recognize the expiration of the claimant's previous benefit year, and the claimant filing an interstate claim against another state which has been deemed ineligible. As claimant filed his claim with an effective date of July 9, 2017, and desires to backdate his claim to July 2, 2017, the administrative law judge will apply the backdating law prior to the July 12, 2017 changes.

Here, claimant had never filed a claim for unemployment insurance benefits in the past. Instead of contacting Iowa Workforce Development for information on how to file a claim for benefits, he chose to rely on information from his coworkers. Claimant is strongly advised to speak with Iowa Workforce Development and familiarize himself with the Unemployment Insurance Benefits Handbook and the process for filing for unemployment. Solely because this was

claimant's first time ever filing for unemployment insurance benefits, his request for backdating is allowed.

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 section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 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 section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 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.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Here, claimant admits that he was only laid off the week of July 2, 2017. He returned to work the week of July 9, 2017. Accordingly, benefits are withheld effective July 9, 2017.

DECISION:

The August 2, 2017 (reference 01) unemployment insurance decision is modified in favor of the appellant/claimant. Claimant's request to backdate his claim to July 2, 2017, is granted, as are retroactive benefits for that one-week period. Claimant is not available for work effective July 9, 2017, and benefits from that point forward are withheld.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/rvs