

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARLA J MCDONALD-PALMER
Claimant

APPEAL NO. 11A-UI-12099-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/02/11
Claimant: Appellant (2)**

871 IAC 24.2(1)g – Retroactive Benefits

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 24, 2011 (reference 02) decision that denied the request for retroactive benefits without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. After due notice was issued, a telephone conference hearing was held on October 6, 2011. Claimant participated.

ISSUE:

The issue is whether claimant's request for retroactive benefits should be granted.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant's appeal is timely, as the appeal was forwarded from the local office to the Employment Appeal Board (EAB) instead of the Appeals Bureau. Claimant filed a claim effective January 2, 2011. She claimed benefits by telephone response through the week ending April 2, 2011 but was unable to get the system to work for her during the ten-week period ending June 11, 2011. She attempted to resolve the issue by going to the local office several times.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's request for retroactive benefits is granted.

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.

Given the local office's mishandling of her appeal, claimant's testimony that she filed her weekly voice response claims and attempted to resolve the problem through the local office but was unsuccessful is credible. Retroactive benefits are allowed.

DECISION:

The August 24, 2011 (reference 02) decision is reversed. The claimant's request for retroactive benefits is granted.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw