

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMES A MILLIGAN**  
Claimant

**APPEAL 17A-UI-06062-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 05/07/17**  
**Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.6(1) – Filing Claims  
Iowa Admin. Code r. 871-24.2(1)a & h(1) & (2) – Backdating

**STATEMENT OF THE CASE:**

James A. Milligan (claimant) filed an appeal from the May 24, 2017, reference 02, unemployment insurance decision that denied his request to backdate the claim for benefits prior to May 7, 2017. After due notice was issued, a hearing was held by telephone conference call on June 29, 2017. The claimant participated. Claimant's Exhibit A was received. Department's Exhibits D1 and D2 were received.

**ISSUE:**

May the claim be backdated prior to May 7, 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 May 7, 2017, and desires to backdate the claim to April 23, 2017. On April 4, 2017, the claimant was offered employment with Whitetail Technical & Construction (employer) to begin on April 24. The claimant accepted the position and left his previous employer on April 21, 2017. The employer notified the claimant that he would be paid his full salary, but would not actually start work until the machinery was in place. On May 10, 2017, the employer notified the claimant that it was closing the business and no one would be paid. The claimant immediately filed for unemployment insurance benefits.

The unemployment insurance decision was mailed to the appellant's address of record on May 24, 2017. The appellant did not receive the decision until June 8, 2017. The appeal was sent within ten days after receipt of that decision.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely and his request to backdate the claim is granted.

Iowa Code § 96.6(2) provides, in pertinent part:

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. . . . 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.

The claimant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Without timely 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 appellant filed the appeal within ten days of receipt. Therefore, the appeal shall be accepted as timely.

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) and (2) provide:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) § 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.

The employer's statement to the claimant that he would be paid his salary while not working was misleading and prevented a prompt filing of the claimant's claim for unemployment insurance benefits. The claimant has presented good cause for his failure to file his claim in a timely manner. Backdating is granted.

**DECISION:**

The claimant's appeal is timely. The May 24, 2017, reference 02, unemployment insurance decision is reversed. The claimant's request to backdate the claim to April 23, 2017, is granted, as are retroactive benefits for the same time period.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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