

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON M BESLER
Claimant

APPEAL NO. 09A-UI-05672-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RACING CHAMPIONS ERTL INC
Employer

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/25/09
Claimant: Appellant (2)**

871 IAC 24.2(1)a & h(1) & (2) – Backdating

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the March 5, 2009, reference 01, decision that denied the request to backdate the claim for benefits prior to January 25, 2009. After due notice was issued, a hearing was held by telephone conference call on May 13, 2009. Claimant participated. Employer participated through Karen Knepper.

ISSUE:

The issue is whether claimant can backdate the claim prior to January 25, 2009.

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 January 25, 2009 and desires to backdate the claim to January 4, 2009. She was separated on January 2, 2009 but delayed filing the claim because she had worked in human resources for years and had not known that a waiver of rights required in order to receive “severance” pay turns the arrangement into a payment in consideration of the waiver and is no longer purely a payment to ease the burden of losing one’s job through no fault of their own. She did not find out about this interpretation of the misnomer until she filed her claim with the Dubuque office and reported receipt of \$5,976.00 in gross “severance” pay only upon her signature confirming agreement to waive legal action against the company.

REASONING AND CONCLUSIONS OF LAW:

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

The labeling of payment in consideration for waiver of legal rights upon separation as severance pay and the resulting misinterpretation is considered a good cause reason for having failed to file a claim during the first week of unemployment. Backdating is allowed.

DECISION:

The March 5, 2009, reference 01, decision is reversed. The claimant's request to backdate the claim is granted.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs