

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J POHL
Claimant

APPEAL NO. 07A-UI-09642-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 09/09/07 R: 04
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 10, 2007, reference 02, which denied claimant's request to backdate a claim. After due notice, a telephone conference hearing was scheduled for and held on October 30, 2007. Claimant participated personally. Claimant failed to respond to the hearing notice and did not participate. Exhibit A was admitted into evidence

ISSUE:

The issue in this matter is whether the claim should be backdated.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant delayed filing for unemployment benefits because he believed that the employer was going to continue paying vacation pay which would in turn make him ineligible. Claimant contacted the employer and did not get a prompt response. Claimant knew that his payments had stopped on August 4, 2007. Claimant did not file upon the cessation of payments by employer but instead investigated for a month to see if he would get any more money for vacation. Claimant sought counsel from the Workforce Development office. The Workforce representative accurately told claimant that he could not receive unemployment while still receiving vacation or severance. Claimant was not told to forego filing for benefits. Claimant filed a claim for benefits with an effective date of September 9, 2007. Claimant asserts that the claim should be backdated to August 11, 2007.

REASONING AND CONCLUSIONS OF LAW:

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

Investigation delay is not considered a good cause reason for having failed to file a claim during the first week of unemployment. Claimant had stopped receiving benefits from the employer August 4, 2007. The cessation of pay is notice to claimant that he should be filing for unemployment. The Workforce Development office did not tell claimant to delay filing but gave accurate advice that he was not eligible when receiving vacation and severance. The fact is that claimant received no vacation or severance after August 4, 2007. Backdating is denied.

DECISION:

The decision of the representative dated October 10, 2007, reference 02, is affirmed. Claimant's request to backdate the claim is denied.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css