

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DAVID C HAMM
3065 PRIMROSE ST
MARION IA 52302

IOWA WORKFORCE DEVELOPMENT
DEPARTMENT

Appeal Number: 04A-UI-00959-B4T
OC: 07-20-03 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 871 IAC 24.2(1)a & h (1) & (2) – Whether the Claim can be Backdated

STATEMENT OF THE CASE:

David C. Hamm appealed from an unemployment insurance decision dated January 29, 2004, reference 02, that held, in effect the claimant's request to backdate his claim was denied because the records indicated he failed to present sufficient grounds to justify or excuse the delay in filing his claim. The request to backdate his claim prior to July 20, 2003 is denied.

A telephone conference hearing was scheduled and held on February 16, 2004. David C. Hamm participated.

Official notice was taken of the unemployment insurance decision bearing reference 02 together with the pages attached thereto (10 pages in all).

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: David C. Hamm was last employed with Nuclear Management Company a subsidiary of Alliance Energy from May 13, 1991 through September 11, 2002.

The claimant was separated from his employment under the provisions of a voluntary separation package. The claimant received a substantial separation allowance. The claimant utilized the separation allowance and did not file a claim for benefits until the benefit week ending July 20, 2003. For various reasons, the claimant waited to file his claim for benefits. The claimant found out that his benefits would be higher if he waited until after July 2003 to file his claim and he was utilizing the severance allowance in order not to file a claim for benefits.

Following the initial claim for benefits having an effective date of July 20, 2003, the claimant received the maximum benefits allowed totaling \$8,372.00.

The claimant then requested that he be allowed to backdate his claim prior to July 20, 2003 in order that he would be allowed to file a claim for extended benefits before the end of his first benefit year.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.2(1)a provides:

- a. Following separation from work, any individual, in order to establish a benefit year during which the individual may receive benefits because of unemployment shall report in person to the nearest workforce development center which takes claims and shall file an initial claim for benefits and register for work.

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 evidence in the record clearly establishes that the claimant delayed in filing his initial claim for benefits for various reasons. The claimant was not misinformed by the department or by the employer, but rather delayed in filing his claim for benefits in order to obtain a higher weekly benefit amount, which he did receive after the effective date January 20, 2003.

The delay in filing the claimant's initial claim for benefits would preclude him from filing a claim for extended benefits.

The administrative law judge concludes that the claimant's request to backdate his claim prior to July 20, 2003 should be denied within the intent and meaning of the foregoing sections of the Iowa Administrative Code.

DECISION:

The unemployment insurance decision dated January 29, 2004, reference 02, is affirmed. The request of David C. Hamm to backdate his claim prior to July 20, 2003 is denied.

kjf/b