	68-0157 (9-06) - 3091078 - EI
KEVIN K MCCARTY Claimant	**APPEAL NO. 13A-UI-06884-H2T** **ADMINISTRATIVE LAW JUDGE** **DECISION**
IOWA WORKFORCE **DEVELOPMENT DEPARTMENT**	
	OC: 05/26/13 **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 7, 2013 (reference 01) decision that denied the request to backdate the claim for benefits prior to May 26, 2013. After the claimant agreed to waive ten days' notice of the date of his hearing, a hearing was held by telephone conference call on June 13, 2013. Claimant participated.

ISSUE:

The issue is whether claimant can backdate the claim prior to May 26, 2013.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was laid off of work on May 17 to begin on May 20, 2013. In the past the employer had always handled all employees' claim for unemployment benefits by dealing with IWD directly. The employer decided that they would no longer handle employees' claim for unemployment insurance benefits when they were laid off. On May 17 the employer gave the claimant a piece of paper with telephone numbers for IWD for him to call to get help filing his claim. During the week beginning May 19 the claimant called the telephone numbers and was directed into voice mail messages. He never received a return call from an IWD employee to help him with his claim for benefits. Because he did not receive a call back during the week he went to his local office for assistance the next week and was told that he should have filed his claim for benefits the week prior. He explained that he had been waiting for a return phone call for help. He was told to request backdating of his claim. The employee did not explain to him that he would be required to call in every week to receive benefits. The claimant was on layoff from May 19 through June 1, 2013. He was on vacation for the week of June 2, through June 8 and is not claiming benefits for that week.

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 claimant attempted to obtain help from IWD by calling the phone numbers his employer provided for him. He did not receive a response to his request for assistance. When he was given information at his local office, it was not complete to put him on notice that he had to call in every week. Since his employer always handled his claims in the past, the claimant did not know what was required of him. Under these circumstances the claimant has established a good cause reason for having failed to file a claim during the first week of unemployment. Backdating is granted. The claimant's claim for benefits shall be backdated to May 19, 2013 and he shall be paid unemployment insurance benefits for the two week period ending June 1, 2013.

DECISION:

The June 7, 2013 (reference 01) decision is reversed. The claimant's request to backdate the claim is granted.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

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