

**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**

**JASON M HOMEWOOD
1210 – 16TH ST SW
CEDAR RAPIDS IA 52404**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-03373-DT
OC: 12/25/05 R: 03
Claimant: Appellant (2)**

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 96.4-3 - Able and Available
871 IAC 24.2(1)a & h(1) & (2) - Backdating

STATEMENT OF THE CASE:

Jason M. Homewood (claimant) appealed a representative's March 8, 2006 decision (reference 01) that denied the claimant's request to backdate a weekly claim for the week ending February 18, 2006. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on April 12, 2006. The claimant participated in the hearing and was represented by Tracy Homewood, who also provided testimony on his behalf. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant had a layoff from work effective February 10, 2006. He had previously established a claim for unemployment insurance benefits effective December 25, 2005. He attempted to reopen the claim on the phone with an additional claim during the week ending February 25, 2006 in order to file a weekly claim for the week ending February 18, 2006, but discovered he could not do so on the phone at that time.

He had not attempted to make a weekly claim for the week ending February 18, 2006 because he was occupied assisting his mother providing full-time care for his terminally ill grandmother. He did attempt to make the claim the following week when he learned that he might still be able to make a claim for the prior week. He was not successful in getting his claim reopened until February 28, 2006 when he spoke with a local Agency office representative.

The claimant was not recalled for work during the week ending February 18, 2006, so no work was available to him regardless of the fact that he was occupied with his grandmother's care.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's claim should be backdated.

871 IAC 24.2(1)g provides:

(g) No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

An individual claiming benefits using the weekly voice continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

For good cause, a claim may be backdated. 871 IAC 24.2(1)h. The administrative law judge finds good cause in the fact that the claimant attempted to make his claim during the week of February 19, 2006, apparently by Friday, February 24, but he subsequently learned that his effort had failed. The claim should be backdated to the week ending February 18, 2006.

The next issue in this case is whether the claimant was eligible for unemployment insurance benefits for the week ending February 15, 2006 by being able and available for employment.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements

of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(41) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499, Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.19(38)"c" and 96.29.

Since no work was actually available, a willingness to work during the week ending February 18, 2006 would not have led to actual employment. Therefore, the claimant is considered able and available for work and eligible for unemployment insurance benefits for that week.

DECISION:

The representative's March 8, 2006 decision (reference 01) is reversed. The claimant's request to backdate his claim to the week ending February 18, 2006 is allowed. He was able and available for work that week to the extent necessary, and is eligible for benefits for that week if he was otherwise qualified.

ld/pjs