

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEVEN A ANDERSON
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 17A-UI-02351-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/12/17
Claimant: Appellant (1)

Iowa Code § 96.6(1) – Filing Claims
Iowa Admin. Code r. 871-24.2(1)h(1) & (2) – Backdating

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 22, 2017, (reference 01) unemployment insurance decision that denied the claimant's request to backdate his claim. After due notice was issued, a telephone hearing was held on March 24, 2017. The claimant participated personally. Department Exhibit D-1 and was admitted into evidence. The administrative law judge took official notice of the administrative record, including fact-finding documents. Based on the evidence, the argument presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Should the claimant's requests to backdate his claim be granted?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant works for Ritchie Industries. The claimant was temporarily laid off from work for the period of December 18 through December 31, 2016. The claimant stated he did not remember when he attempted to file his weekly claim, but believed it was Friday during the first week he was unemployed (December 23, 2016). The claimant used his cellular phone to attempt to open and file his claim. The claimant stated his phone was not working (Department Exhibit D-1), but the claimant tried "twenty times" submit the claim, using his phone as the internet source. The claimant stated he then attempted to resubmit the claim during his second week of unemployment (December 25 through 31, 2016), again through his cellular phone, but it did not go through. The claimant did not contact his closest local IWD office (Waterloo) or customer service for assistance during the two week period he was unemployed. Nor did he visit an IWD office during the two week period of unemployment for guidance or help in filing his claim, because his girlfriend had his car. The claimant did not have home internet service and made no arrangements to borrow a friend or family member's computer or visit a public computer, like the library, during his layoff.

Upon returning to work, the claimant reported he contacted IWD for assistance with his claim. Accordingly to the claimant between January 1, 2017 (when he returned to work) and the week of February 12, 2017, he made three attempts to call for assistance. He was unsure when he called IWD, who he spoke to, and whether he called the Waterloo office, the customer service line or both. He only recalled the representatives were all female. The claimant asserted after his first phone call, he was told he was "all set" and he would hear from IWD about his claim in a month. The claimant stated he waited a month and called back (date unknown) when he did not receive information, and then called a third time during the week of February 12, 2017, when he was informed his claim had not gone through and he would have to file a request to backdate his claim. The claimant acknowledged his benefit year may have expired between the two weeks. He did not successfully establish a new claim for a second benefit year during the two week period while laid off.

The claimant has a weekly benefit amount (WBA) of \$447.00. For the week ending December 24, 2016, the claimant received 8 hours of holiday pay at a rate of \$18.75 = 150.00. For the week ending December 31, 2016, the claimant received 16 hours of holiday pay at a rate of \$18.75 = \$300.

The claimant seeks to backdate his claim to December 18, 2016.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6-1 provides:

1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

Iowa Admin. Code r. 871-24.2(1)h(1) and (2) 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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witness and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant has not shown he received incorrect advice by an agency employee, his failure to file an earlier claim was due to the employer's failure to comply with the law, or the employer prevented the claimant from promptly filing a claim.

The claimant was temporarily unemployed for a two week period of December 18 through 31, 2016. The claimant believed he first attempted to file his claim on Friday, December 23, 2016, using his cell phone as his internet service. In light of the claimant's "twenty" attempts to submit his claim, it did not go through, and the claimant acknowledged his phone was not working (Department Exhibit D-1). The claimant reported he continued to using his cell phone as his internet service, to submit his claim, even though it had been previously unsuccessful. No credible evidence was presented to support that the agency website was responsible for the error or that the online filing system was inoperable.

The claimant made no attempt during his second week of unemployment to contact the customer service to resolve the issue. The claimant made no effort to contact his local IWD office in Waterloo, to either help resolve the issue, or alternately use one of their computers. The claimant did not try to use another computer, such as a friend or family member's or even a public library computer, so that he could complete his weekly claims for the two weeks for which he was unemployed. The claimant stated he did not have transportation because his girlfriend was using his vehicle. It was not until after he returned to work and after the claimant knew his claim had not been successfully transmitted during the two week layoff that he first contacted IWD for assistance.

The administrative law judge is not persuaded any misinformation that may have been provided by any representative would be relevant to the claimant's request, inasmuch as he waited until after he returned to employment to attempt to contact IWD, and therefore, IWD could not have contributed to his delay in establishing his claim in response to the December 18, 2016 layoff. Based on the vague testimony offered by the claimant, the administrative law judge is also not persuaded the claimant was even offered incorrect information based on his contact with IWD beginning in January 2017. The claimant was unsure if he called the local Waterloo IWD office or customer service number or both. He had no dates available of calls made, or names of people he spoke to, or specific information to support a delay in filing his claim was due to agency error or incorrect information being provided. Based on the evidence presented, the administrative law judge concludes the claimant has failed to establish sufficient grounds to justify or excuse the delay in filing his claim. The claim for unemployment insurance benefits is effective February 12, 2017.

DECISION:

The February 22, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant's request to backdate the claim to December 18, 2016, is denied. The claim is effective February 12, 2017.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs