

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**STEVEN D TAPKE**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 17A-UI-02350-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/05/17  
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 27, 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 Dyersville Ready Mix. In January 2017, the claimant was offered the option of a one week "lay-off" to allow him to go to Florida without using any vacation time. Had he not gone on vacation, continuing work was available to him for the week of January 29 through February 4, 2017. The claimant was not paid any wages or vacation pay for the week. He made no efforts to open his unemployment claim until he returned from Florida on Sunday, February 5, 2017. He did not inquire with Iowa Workforce Development about the requirements of opening an unemployment claim during the period of January 29 through February 4, 2017. The claimant was unaware that he had to file his claim during the week he did not perform work. He returned back to work on February 6, 2017 and continues working for this employer. The claimant seeks to backdate his claim to January 29, 2017.

**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.

The claimant in this case requested to backdate his claim to January 29, 2017, because he did not perform work for his employer, Dyersville Ready Mix. The claimant did not perform work from January 29 through February 4, 2017 so he could take a personal trip to Florida and not use vacation time. He made no efforts to establish his unemployment claim until he returned on Sunday, February 5, 2017.

Without even addressing the issue of whether the claimant was in fact on a true layoff or would be otherwise eligible for benefits, the administrative law judge concludes 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. Therefore, 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 5, 2017.

**DECISION:**

The February 27, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant's request to backdate the claim to January 29, 2017, is denied. The claim for unemployment insurance benefits is effective February 5, 2017.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs