

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSE A VELASQUEZ GARCIA
Claimant

APPEAL 16A-UI-12814-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 11/13/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Jose A. Velasquez Garcia (claimant) filed a timely appeal from the November 28, 2016 (reference 01) unemployment insurance decision that denied the request to backdate the claim for benefits prior to November 13, 2016. After due notice was issued, a hearing was scheduled to be held by telephone conference call on December 16, 2016. The claimant participated. His supervisor Travis Broley also participated on his behalf. The claimant's witness Matt Smith was contacted during the hearing, but he did not answer his phone and did not participate. No exhibits were offered or received into the record.

ISSUE:

May the claim be backdated prior to November 13, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits with an effective date of November 13, 2016 and desires to backdate the claim to November 6, 2016. The claimant contacted the employer on November 7, 2016 from California where he was visiting family and learned there was no work available that week. He knew he was placed on layoff for the season, but could be called back at any time. He did not file a claim for benefits that week. The following week he returned to Iowa and filed his claim for benefits.

The claimant works in construction and files for unemployment benefits during the winter every year. He sometimes files for benefits at his local office and sometimes he files his claim online. The administrative record shows he has filed weekly continued claims for benefits every year beginning in 2007. He received an Unemployment Insurance Handbook and read parts of it.

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) § 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 has not provided sufficient grounds to justify or excuse his delay in filing for unemployment insurance benefits. He has been through the unemployment insurance claims process every year for the last eight years. He has also received the Unemployment Insurance Handbook. The claimant was not given any incorrect information from his employer or Iowa Workforce Development. Backdating is denied.

DECISION:

The November 28, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant's request to backdate the claim to November 6, 2016 denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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