

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RAMON H NICHOLSON
Claimant

APPEAL NO. 09A-UI-02955-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/21/08
Claimant: Appellant (2)**

871 IAC 24.2(1)a & h(1) & (2) – Backdating
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the February 12, 2009, reference 02, decision that denied backdating his claim for benefits. After due notice was issued, a hearing was held by telephone conference call on March 18, 2009. Claimant did participate.

ISSUES:

The issue is whether the claimant's appeal is timely.
The issue is whether the claimant's claim can be backdated

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last-known address of record on February 12, 2009. The claimant did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 22, 2009. February 22, 2009 is a Sunday so the claimant had until February 23, 2009 to file an appeal. The date on the appeal letter is February 22, 2009. The claimant credibly testified that a faxed appeal was sent on February 23, 2009. The claimant checked with Iowa Workforce Development and was told they could not find or did not receive his appeal. The claimant sent in the appeal again on February 24, 2008.

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 December 21, 2008 and desires to backdate the claim to December 14, 2008. Claimant delayed filing the claim because he started to file online but was under the impression from the Iowa Workforce Development web site he needed a PIN number before he could continue filing his claim. He completed his application the next week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal is timely.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Based upon the evidence provided by the claimant an appeal was filed timely.

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.

For the reasons that follow, the administrative law judge concludes the claimant's request to backdate the claim is allowed. The claimant received information from Iowa Workforce Development which he relied upon and delayed his application and is considered a good cause reason for having failed to file a claim during the first week of unemployment. Backdating is allowed.

DECISION:

The February 12, 2009, reference 02, decision is reversed. The claimant's request to backdate the claim is granted. The claims section shall back date the claim to December 14, 2008.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs