

**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**

**NOE BERNABE
305 E 3RD ST
WEST LIBERTY IA 52776**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 05A-UI-00881-DT
OC: 01/16/05 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)

871 IAC 24.2(1)a & h(1) & (2) - Backdating

STATEMENT OF THE CASE:

Noe Bernabe (claimant) appealed a representative's January 20, 2005 decision (reference 01) that denied the claimant's request to backdate the claim prior to January 16, 2005. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on February 10, 2005. The claimant participated in the hearing and presented testimony from one other witness, Beth Vander Schel. Rosemary Paramo-Ricoy served as interpreter. 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 started working for the employer Nature Care Company on March 17, 1997. The claimant had a seasonal layoff from employment effective December 10, 2004; his last day worked before the layoff was December 9, 2004. He went to the Iowa City Agency office on both December 9 and December 10, 2004 to attempt to establish a claim. An Agency representative told him that everything was set up and gave him a sheet of paper giving him instructions about calling in a weekly claim the next week when he was not working. Beginning on or about December 18 the claimant attempted to call in claims weekly. He was getting a message regarding his claim that he did not quite understand, but did not pursue the matter immediately as he knew it would take several weeks to get his first payment. He was recalled to work on January 18, 2005. At that time, he spoke to the employer's human resources administrator, Ms. Vander Schel, and explained that he was not sure of the message he had been getting. Ms. Vander Schel called the number herself and got the message, which indicated that the claimant did not have an open claim. The claimant then returned to the Iowa City Agency office and a claim for unemployment insurance benefits was established for him effective January 16, 2005.

REASONING AND CONCLUSIONS OF LAW:

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

Agency rule 871 IAC 24.2(1)h provides that claims for unemployment insurance benefits are ordinarily effective on the Sunday of the calendar week in which the individual files the initial claim. For good cause, a claim may be backdated. The administrative law judge finds good cause in what was apparently a failure on the part of the Agency to effectively create the claim when the claimant sought to open the claim on December 9 and December 10, 2004. The claim should be backdated to December 12, 2004.

DECISION:

The representative's January 20, 2005 decision (reference 01) is reversed. The claimant's request to backdate his claim to December 12, 2004 is granted.

ld/pjs