

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE P ELLERMAN
Claimant

APPEAL NO. 08A-UI-00289-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/02/07 R: 04
Claimant: Appellant (2)**

871 IAC 24.2(4)d(1) – Cancellation of Unemployment Insurance Claim
871 IAC 24.2(1)a & h(1) & (2) – Backdating

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 2, 2008, reference 02, decision that denied the request to cancel the claim. After due notice was issued, a telephone conference hearing was held on January 24, 2008. Claimant participated.

ISSUE:

The issue is whether claimant may cancel his claim, establish a new claim date and backdate weekly claims to that new claim date.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant filed an Internet claim sometime during the week of December 2, 2007 and the monetary record was mailed to him on December 5, 2007. A corrected monetary record was mailed on January 2, 2008. He requested cancellation of his claim on December 14, 2007 but that was denied. Claimant wishes to change the effective date of the claim to January 6, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's request to reinstate the Iowa claim for unemployment insurance benefits effective July 17, 2005 is granted.

871 IAC 24.2(4)c and d provide:

Cancellation of unemployment insurance claim.

c. Cancellation requests within the ten-day protest period. The claims section, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

d. Other valid reasons for cancellation whether or not ten-day protest period has expired.

(1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.

(2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.

(3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance which was filed prior to the unemployment insurance claim.

(4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim must be filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) The Iowa wages are erroneous and are deleted and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

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.

Because of the misunderstanding of how the base period would affect his claim because of the exclusion of a full time employer and since his request was initially made on December 14 within ten days of the monetary record and even before the corrected monetary record was mailed on January 2, 2008, claimant's request to cancel the claim and reset the effective date or original claim date to January 6, 2008 is granted. Likewise, the claims for the three weeks ending January 26 shall be considered as filed and claimant shall be eligible for those benefits based on the claim cancellation and backdating.

DECISION:

The January 2, 2008, reference 02, decision is reversed. The claimant's request to cancel the December 2, 2007 claim, establish a new claim date of January 6, 2008 and backdate claims for the three-week period ending January 26, 2008 is granted.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css