

**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**

**ANNETTE M WADE
220 N HICKORY BLVD
PLEASANT HILL IA 50327**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 05A-UI-08549-LT
OC: 07-31-05 R: 02
Claimant: Appellant (4R)**

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
Iowa Code §96.4(3) - Able and Available
Iowa Code §96.5(5) – Severance Pay

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the August 10, 2005, reference 02, decision that denied the request to backdate the claim for benefits prior to July 31, 2005. After due notice was issued, a hearing was held on September 6, 2005. Claimant did participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed through June 1, 2005. William Kay, of IWD, told claimant she should wait to file her claim since she was going to get severance pay. Employer did pay her severance pay of

\$784.12 based upon \$7.75 per hour for approximately 101 hours and she usually worked an average of 5 to 10 hours per week.

She was in hospital from June 28 through July 19 and was unable to work during that time. However, had claimant filed when she initially planned to effective May 29, 2005, she would have been entitled to a weekly benefit amount (WBA) of \$108.00 rather than the \$63.00 for which she is eligible upon filing effective July 31, 2005 as urged by Kay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's request to backdate the claim is granted.

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.

The incorrect advice from IWD influenced claimant to wait to file her claim for benefits from the week of May 29, 2005 to July 31, 2005 which resulted in a lower WBA. The inaccurate direction from the agency is considered a good cause reason for having failed to file a claim during the first week of unemployment. Backdating is granted to May 29, 2005.

However, since claimant was not able to work because of being in the hospital from June 28 through July 19, she is ineligible for benefits for that period. The calculation of severance pay as set out in the findings of fact is remanded for calculation.

DECISION:

The August 10, 2005, reference 02, decision is modified in favor of the appellant. The claimant's request to backdate the claim is granted to May 29, 2005. She is ineligible for benefits from June 28 through July 19, 2005 related to her hospitalization and her severance pay shall be calculated concurrently, not consecutively with the period she was unable to work.

dml/pjs