

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS SCHMIEG
Claimant

APPEAL NO: 09A-UI-17083-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10-18-09
Claimant: Appellant (2)**

871 IAC 24.2(1) A&H (1)&(2) – Backdating Claim

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 6, 2009, reference 01, decision that denied his request to backdate his claim. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 24, 2009. The claimant participated in the hearing.

ISSUE:

The issue is whether the claimant's unemployment insurance benefits claim can be backdated.

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 October 18, 2009. The claimant's employer required all employees to take two weeks off without pay between July 1, 2009 and December 31, 2009, and advised them to file unemployment for the two weeks they took off without pay. The claimant took his first week without pay from July 26 to August 2, 2009. He filed an online unemployment claim and received the confirmatory email from Workforce that it received his claim. He did not receive a payment and consequently called Workforce and was told there was no claim on file and he would have to go to his local office to talk to someone about fixing the problem. He took a day of vacation and went to Workforce and when the employee helping him could not deduce what the problem was he/she had him fill out a new claim. The claimant received the green paper in the mail stating his wages and his weekly benefit amount but did not receive a payment so he contacted Workforce again and a different employee entered his information once more and then he received a letter denying his claim. The first time he went to Workforce in person he told the employee he talked to that he was going to take his second unpaid week off work November 8 to November 14, 2009, and was told the claim for that week was already set up and he should call in November 8, 2009. He did so and after following the prompts was told there was no claim and he would have to file a new claim.

REASONING AND CONCLUSIONS OF LAW:

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

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 claimant did everything he was required to do to establish a claim and receive benefits for the two weeks he was off without pay. His claim was never filed by Workforce on the two

occasions he attempted to file despite his many efforts to have the situation corrected. Workforce error is considered a good cause reason for backdating a claim. Backdating to July 26, 2009, is allowed. The claimant shall receive benefits for the week ending August 1, 2009, and the week ending November 14, 2009.

DECISION:

The November 6, 2009, reference 01, decision is reversed. The claimant's request to backdate the claim to July 26, 2009, is allowed. The claimant shall receive benefits for the week ending August 1, 2009, and the week ending November 14, 2009.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs