

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES J BOGE
Claimant

APPEAL NO. 16A-UI-05455-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOHRN TRANSFER COMPANY LLC
Employer

**OC: 04/10/16
Claimant: Appellant (2R)**

Iowa Code § 96.23 – Substitution of Wages Due to Receipt of Workers' Compensation

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 3, 2016 (reference 01) decision that denied the claimant to substitute wages in calendar quarters prior to the base period. After due notice was issued, a telephone conference hearing was held on May 31, 2016. Claimant participated. Employer participated through Sally Jackson, Human Resources Director.

ISSUE:

Is the claimant is entitled to substitute calendar quarters prior to the regular base period due to receiving workers' compensation benefits?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was off work receiving temporary total disability (TTD) workers' compensation benefits due to a work-related injury from April, 2014 to January 1, 2015 when he reached maximum medical improvement (MMI) and began receiving permanent partial disability (PPD) payments. The claimant filed a new claim for unemployment insurance benefits with an effective date of April 10, 2016. The regular base period for determining qualification for benefits was from the First quarter of 2015 through the Fourth quarter of 2015. The claimant stated that he received TTD during Three quarters of the base period, and the employer concurred with claimant's assertion.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is entitled to substitute calendar quarters prior to the regular base period due to receiving workers' compensation benefits.

Iowa Code § 96.23 provides:

The department shall exclude three or more calendar quarters from an individual's base period, as defined in section 96.19, subsection 3, if the individual received workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17 or indemnity insurance benefits during those three or more calendar quarters, if one of the following conditions applies to the individual's base period:

1. The individual did not receive wages from insured work for three calendar quarters.
2. The individual did not receive wages from insured work for two calendar quarters and did not receive wages from insured work for another calendar quarter equal to or greater than the amount required for a calendar quarter, other than the calendar quarter in which the individual's wages were highest, under section 96.4, subsection 4.

The department shall substitute, in lieu of the three or more calendar quarters excluded from the base period, those three or more consecutive calendar quarters, immediately preceding the base period, in which the individual did not receive such workers' compensation benefits or indemnity insurance benefits.

The claimant may qualify to have wage credits earned prior to the regular base period used to determine qualification for unemployment insurance benefits since he may have received TTD in three or more calendar quarters of the regular base period. Employer received information from its workers' compensation officer that confirms that claimant did receive workers' compensation benefits beginning in April, 2015. The hearing record, and the administrative records are not clear if whether those benefits were properly accounted for based on the testimony and evidence provided by employer at the hearing.

DECISION:

The unemployment insurance decision dated May 3, 2016 (reference 01) is **REMANDED**: The issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for further investigation and determination as to whether claimant is entitled to substitute calendar quarters prior to the regular base period.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs