

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEANNA L COLLINS
Claimant

APPEAL NO. 11A-UI-07632-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

**OC: 05-15-11
Claimant: Appellant (1)**

Section 96.23 – Substitution of Wages Due to Receipt of Workers' Compensation

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 1, 2011, reference 04, decision that denied substitution of workers compensation benefits in lieu of wages into her base period. After due notice was issued, a hearing was held on July 12, 2011. The claimant did participate and was represented by Steven Hamilton, Attorney at Law. The employer did not participate. Official notice of agency records was taken. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Can the temporary total or healing period benefits the claimant received be substituted into her base period for her unemployment claim?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant sustained a work-related injury on January 15, 2010. She continued to work for the employer until she underwent surgery on September 2, 2010. She received temporary total disability (TTD) benefits or healing period (HP) benefits from September 2, 2010 through March 2, 2011.

The claimant filed a claim for unemployment insurance benefits with an effective date of May 15, 2011. Her base period for her claim is the four quarters beginning January 1, 2010 through December 31, 2010. The claimant only received TTD benefits or HP benefits during the first quarter of her base period. She did not receive qualifying workers compensation benefits during three or more quarter of her base period.

REASONING AND CONCLUSIONS OF LAW:

The first 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 section 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 proceeding the base period, in which the individual did not receive such workers' compensation benefits or indemnity insurance benefits.

The claimant does not qualify to have wage credits from before her regular base period used to determine her qualification for unemployment insurance benefits since she did not receive TTD or HP benefits in three or more calendar quarters of her regular base period.

DECISION:

The unemployment insurance decision dated June 1, 2011, reference 04, is affirmed. The claimant is not entitled to substitute calendar quarters prior to the regular base period.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css