

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAOMIN YAO
Claimant

PIONEER HI-BRED INTERNATIONAL INC
Employer

APPEAL 18A-UI-03979-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/18
Claimant: Appellant (1)

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 March 26, 2018, (reference 01) unemployment insurance decision that denied the request to substitute wages in calendar quarters prior to the base period. After due notice was issued, a telephone conference hearing was held on April 23, 2018. Claimant participated and testified with the assistance of a Mandarin interpreter from CTS Language Link. Jim Hamilton also participated on behalf of the claimant as his non-attorney representative. The employer elected not to participate. Claimant's Exhibit A was received into evidence.

ISSUE:

Can the claimant substitute calendar quarters prior to the 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 17, 2016, to February 8, 2017, 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 January 28, 2018. The regular base period for determining qualification for benefits was from the fourth quarter of 2016, through the third quarter of 2017. The claimant did not receive wages during any quarter of the base period. He received TTD during the first two quarters of the base period.

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 section 96.23 provides:

Base period exclusion.

1. 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:

a. The individual did not receive wages from insured work for three calendar quarters.

b. 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, paragraph "a".

2. 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 does not qualify to have wage credits earned prior to the regular base period used to determine qualification for unemployment insurance benefits since he did not receive TTD in three or more calendar quarters of the regular base period.

DECISION:

The March 26, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is not entitled to substitute calendar quarters prior to the regular base period.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs