

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SEAN L CRANE

Claimant

APPEAL 19A-UI-06230-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RENAL TREATMENT CENTERS

Employer

OC: 07/21/19

Claimant: Appellant (1)

Section 96.5-5 – Disqualification Due to Other Compensation
871 IAC 24.13(3)d – Fully Deductible Payments from Benefits
Section 96.23 – Base Period Exclusion

STATEMENT OF THE CASE:

Sean Crane (claimant) appealed a representative's August 2, 2019, decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after separation from work with Renal Treatment Centers (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 28, 2019. The claimant was represented by Erik Bair, Attorney at Law, and participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibits A, B, and C were received into evidence. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue is whether the claimant qualifies to substitute calendar quarters before his base period due to the receipt of workers' compensation benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant performed work for the employer from October 3, 2011, to March 15, 2018, as a full-time bio-medical technician two. He suffered a work-related injury on January 6, 2018, and received disability payments.

The Iowa Division of Workers' Compensation records show the claimant received total temporary disability (TTD) benefits from March 16, 2018, through June 30, 2018. (Exhibit C) The claimant would have received TTD from the second quarter of 2018, through the third quarter of 2018. Benefits were listed at a rate of \$647.86 for 15.286 weeks.

The insurance company provided a summary of benefits indicating the claimant received temporary total payments from March 16, 2018, through December 2018, for 40.2857 weeks at an unknown rate for \$25,887.27. (Exhibit A) If the rate of pay was consistent, it would be calculated to be \$642.59. The claimant did not receive consistent payments. The amount of TTD paid to the claimant per quarter is unknown.

On July 21, 2019, the claimant filed for unemployment insurance benefits. His base period of employment was from the second quarter of 2018, through the first quarter of 2019. The claimant had no wage credits during his base period of employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant cannot substitute calendar quarters before his base period on his unemployment claim.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Admin. Code r. 871-24.13(3)d provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.

Iowa Code section 96.23(1), (2) provides:

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.

When a claimant receives workers' compensation during three or more calendar quarters of the base period of his claim, the claimant can substitute calendar quarters before the claimant's base period. The claimant provided disputed evidence about whether he receive workers' compensation for total temporary disability during three or more calendar quarters in the claimant's current base period. As such, the claimant's request to have his claim redetermined by substituting calendar quarters before his base period is denied.

DECISION:

The August 2, 2019, representative's decision (reference 01) is affirmed. The claimant's request to have his claim redetermined by substituting calendar quarters before his base period is denied.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs