

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS L HAINES**  
Claimant

**APPEAL NO: 15A-UI-04400-JE-T**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**RA JONES & CO**  
Employer

**OC: 03/22/15**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a representative's decision dated April 8, 2015 (reference 01) that concluded he was not entitled to substitute wages from R.A. Jones & Company earned prior to the receipt of workers' compensation to establish a higher monetary eligibility for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 19, 2015. The claimant participated in the hearing. Johnna Mahoney, Human Resources Representative, participated in the hearing on behalf of the employer. .

**ISSUE:**

Is the claimant entitled to substitute wages prior to the receipt of workers' compensation to establish his eligibility for unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a full-time sheet metal worker from January 16, 2006 to March 25, 2015. He suffered a work-related injury on May 29, 2012. His last day of actual work with the employer was February 1, 2013; after which the claimant was off work receiving temporary total disability (TTD) workers' compensation benefits. The claimant stopped receiving TTD as of March 15, 2015.

The claimant established an unemployment insurance benefit year effective March 22, 2015. As specified by Iowa Code § 96.19-3, his regular base period for determining his qualification for benefits was from the third quarter 2013 through the third quarter 2014 (October 1, 2013 through September 30, 2014). During that period the claimant received TTD benefits in all four quarters. Also during that period, Agency records showed that the claimant had no wage credits from his employment with the employer during his base period even though he did perform work under light-duty work restrictions during the first quarter of 2013 but those wages were significantly less than the wages he had previously earned as a sheet metal worker. The claimant seeks to substitute prior quarters' wages from when he was earning the higher wage into his base period for redetermination of a higher weekly benefit amount and maximum benefit amount.

## REASONING AND CONCLUSIONS OF LAW:

An individual who has received workers' compensation during a healing period for an extended time and has insufficient wage credits in his base period may qualify for unemployment insurance benefits. Under specific circumstances, the department shall exclude certain quarters in the base period and substitute three or more consecutive calendar quarters immediately preceding the base period that were prior to the workers' compensation benefits.

Iowa Code § 96.23 provides in pertinent part:

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.

[or]

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.

Emphasis added.

Rule 871 IAC 24.7, adopted by the Agency to implement Iowa Code § 96.23, provides:

871—24.7 (96) Workers' compensation or indemnity insurance exclusion and substitution.

24.7(1); An individual who has received workers' compensation under Iowa Code chapter 85 during a healing period or temporary total disability benefits or indemnity insurance benefits for an extended period of time and has insufficient wage credits in the base period may qualify for unemployment insurance benefits. Under specific circumstances as described below, the department shall exclude certain quarters in the base period and substitute three or more consecutive calendar quarters immediately proceeding the base period which were prior to the workers' compensation or indemnity insurance benefits.

24.7(2); An individual may receive workers' compensation during a healing period or temporary total disability benefits or indemnity insurance benefits until the individual returns to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.

24.7(3); The department shall make an initial determination of eligibility for unemployment insurance benefits. If the individual has no wage records or lacks qualifying wage requirements, the department shall substitute three or more calendar quarters of the base period with those three or more consecutive calendar quarters immediately proceeding the base period in which the individual did not receive workers' compensation benefits or indemnity insurance benefits. The qualifying criteria for substituting quarters in the base period are that the individual:

- a. Must have received workers' compensation benefits under Iowa Code chapter 85 or indemnity insurance benefits for which an employer is responsible during the excluded quarters, and
- b. Did not work in and receive wages from insured work for:
  - (1) Three or more calendar quarters in the base period, or
  - (2) Two calendar quarters and lacked qualifying wages from insured work during another quarter of the base period.

24.7(4); Subject to the provisions of subrule 24.7(3), the department shall use the following criteria for allowances and disqualifications.

- a. Allowances. When the allowance criteria are met, the department shall always exclude and substitute at least three quarters of the base period if the individual received workers' compensation or indemnity insurance benefits in:
  - (1) Four base period quarters with no earnings in at least two of the quarters and the individual lacks qualifying earnings, the department will exclude and substitute all four quarters of the base period.
  - (2) Three no earnings base period quarters, with or without earnings in the fourth quarter, the fourth quarter remains in the base period and the department will exclude and substitute only three quarters in the base period.
- b. Disqualifications. The request for retroactive substitution of base period quarters shall be denied if the individual received workers' compensation or indemnity insurance benefits in:
  - (1) At least three base period quarters but the individual is currently monetarily eligible with an established weekly and maximum benefit amount.
  - (2) At least three base period quarters and the individual has base period wages in three or more of the base period quarters, but the claim lacks qualifying earnings.
  - (3) Less than three base period quarters.

24.7(5); The individual shall be requested to complete the Affidavit and Questionnaire, Form 60-0286, which requests the following information:

- a. Individual's name and social security number.
- b. Name of employer responsible for the workers' compensation benefits or the indemnity insurance benefits.
- c. Names of employers and periods worked for the period preceding the workers' compensation or the indemnity insurance pay period.
- d. Name of the workers' compensation or indemnity insurance carrier or, if self-insured, the name of the employer.
- e. Specify whether the wages determined to be in the individual's base period were or were not received for working in insured work during the base period.

24.7(6); The department will mail the re-determined initial claim to the individual. When the claim for benefits is determined to be monetarily eligible for payment, the employer responsible for the workers' compensation or the indemnity insurance benefits shall be notified of the redetermination and shall be responsible for the charges on the re-determined claim which are solely due to wage credits considered to be in the individual's base period due to the exclusion and substitution of calendar quarters. The employer responsible for the workers' compensation or indemnity insurance benefits shall have the right to protest as provided in rule 24.8(96).

The claimant did receive TTD benefits for three or more calendar quarters of his base period. He also did not receive wages from insured work for three calendar quarters of his base period. The claimant is not otherwise currently monetarily eligible with an established weekly and maximum benefit amount. Therefore, under the provisions of the rule interpreting the statute, the claimant is eligible for a redetermination of his claim to obtain a weekly and maximum benefit amount.

**DECISION:**

The representative's decision dated April 8, 2015 (reference 01) is reversed. The claimant's request to have his claim re-determined, by substituting calendar quarters prior to his base period, is allowed.

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Julie Elder  
Administrative Law Judge

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Amended Decision Dated and Mailed

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