

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROD R HAWKINS

Claimant

APPEAL NO. 08A-UI-05557-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AKER PLASTIC COMPANY INC

Employer

**OC: 06/01/08 R: 03
Claimant: Respondent (1)**

Section 96.23 - Substitution of Workmen's Compensation Benefits as Wage Credits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated June 11, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on June 30, 2008. Although notified, the claimant failed to respond to the hearing notice and did not participate. The employer participated by Vicki Juhaz, Human Resource Manager.

ISSUE:

Whether the claimant is eligible to substitute workers' compensation benefits as wage credits on his unemployment claim.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant worked for this employer from October 8, 1997 until February 17, 2007, when the plant where he was assigned to work was closed. Mr. Hawkins' last day of work was September 18, 2006, when he was injured on the job. The claimant worked as a full-time production worker and was paid by the hour. Mr. Hawkins reported the work-related injury and a workmen's compensation claim was filed. Mr. Hawkins received temporary total disability based upon his work-related injury.

Mr. Hawkins filed a claim for unemployment insurance benefits effective June 1, 2008. Upon filing his claim for benefits, it was determined that Mr. Hawkins did not receive wages from insured work for three calendar quarters in his base period.. As the claimant had received workmen's compensation benefits for temporary total disability during preceding calendar quarters, Iowa Workforce Development substituted three quarters immediately preceding the base period during which Mr. Hawkins did not receive workmen's compensation benefits.

Mr. Hawkins' disability began March 24, 2007. Based upon the determination of the claimant's base period, the Department substituted in lieu of excluded base period wages the claimant's wages for the first, second, third, and fourth quarters of the calendar year 2006.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Iowa Workforce Development correctly substituted base period wages found in calendar quarters prior to the claimant's base period because the claimant received temporary total disability instead of wages for insured work for three calendar quarters prior to his claim for benefits. It does.

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 preceding the base period, in which the individual did not receive such workers' compensation benefits or indemnity insurance benefits.

For the reasons stated herein, the administrative law judge concludes that Iowa Workforce Development correctly substituted in lieu of three or more excluded quarters from the claimant's base period consecutive calendar quarters immediately preceding the claimant's base period, as Mr. Hawkins had received temporary total disability in the quarters preceding his separation from employment. The evidence in the record establishes that the claimant did receive temporary total disability and that the Agency correctly substituted three or more consecutive calendar quarters immediately preceding the claimant's based period as required by the provisions of the law.

DECISION:

The representative's decision dated June 11, 2008, reference 01, is hereby affirmed. The claimant has met the requirement of the workmen's compensation provision of the law to substitute base period wages. Therefore, wages in calendar quarters prior to his base period were properly added to the claimant's unemployment insurance claim.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/kjw