

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEONDRAH L DUNN
Claimant

DEERE & COMPANY
Employer

APPEAL 19A-UI-00947-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/06/19
Claimant: Appellant (2R)

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 January 25, 2019, (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 February 27, 2019. Claimant participated and was represented by attorney Charles Showalter. Employer participated through Labor Relations Administrator Ryan Moode.

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 last work on May 5, 2017. According to claimant she went off work at this time due to a work-related injury that occurred on February 3, 2017. The employer disputed that the injury was work-related. When claimant went off work she received weekly indemnity benefits from the employer for one year, beginning May 5, 2017 and ending May 3, 2018. (Exhibit 3). Claimant also filed a worker's compensation claim. That claim was decided by Deputy Workers' Compensation Commissioner Jennifer S. Gerrish-Lampe on October 11, 2018. (Exhibit 1). The deputy commissioner found the injury was work-related and awarded total temporary disability payments in the amount of \$395.71 per week from May 5, 2017 until she reaches maximum medical improvement under Iowa Code Section 85.34. Claimant has still not reached maximum medical improvement. Claimant has not received any TTD benefits to date, as the employer has appealed the deputy commissioner's decision.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 6, 2019. The regular base period for determining qualification for benefits was from the fourth quarter of 2017, through the third quarter of 2018. The claimant did not receive any wages during the first or third quarters of 2018. Claimant did receive \$1,560.00 in wages in the

fourth quarter of 2017 and \$1,027.00 in wages in the second quarter of 2018 as part of a profit sharing provision in the collective bargaining agreement.

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 § 96.23 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.

Iowa Admin. Code r. 871—24.7 (1-4) provides:

(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 preceding the base period which were prior to the workers' compensation or indemnity insurance benefits.

(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.

(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 preceding 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 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.

(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.

The claimant did receive indemnity insurance benefits during three calendar quarters of her base period. Those payments occurred beginning May 5, 2017 (second quarter of 2017) and continued through the second quarter of 2018. Additionally, claimant was awarded, but has not yet received TTD benefits for all four quarters of her base period. Claimant has not yet received those benefits because the award is currently awaiting a decision on appeal. Claimant did not work, but receives wages in the form of a profit sharing bonus on the fourth quarter of 2017 and the second quarter of 2018; therefore, Iowa Code § 96.23(1)(a) does not apply to this case.

The claimant did not work or receive wages from insured work for two calendar quarters (first and third quarters of 2018), thus satisfying the first prong of Iowa Code § 96.23(1)(b). In order to establish a monetarily eligible claim, the claimant must have earned wages of at least \$1,610.00 in one quarter and at least \$800.00 in a different quarter for the program year July 1, 2018 through July 6, 2019. <https://www.iowaworkforcedevelopment.gov/monetary-eligibility>; see also Iowa Code § 96.4(4)a. When analyzing the second prong of Iowa Code § 96.23 (1)(b), the claimant must not have received 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(4)(a).

In this case, the claimant received \$1,560.00 during the fourth quarter of 2017 and \$1,027.00 during the second quarter of 2018 as part of a profit sharing bonus. This amount is not equal to or greater than the amount required under Iowa Code § 96.4(4)a. Further, Iowa Admin. Code r. 871-24.7(3)(b) provides that a claimant is eligible for substitution of calendar quarters if they did not receive wages from insured work during two calendar quarters and lacked qualified wages from insured work during another calendar quarter of the base period. As such, claimant is eligible to have her claim redetermined by substituting calendar quarters before her base period pursuant to Iowa Admin. Code r. 871-24.7(4)a(1).

DECISION:

The unemployment insurance decision dated January 25, 2019 (reference 01) is reversed. The claimant is entitled to substitute calendar quarters prior to the regular base period pursuant to Iowa Admin. Code r. 871-24.7(4)a(1).

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for a redetermination of the claimant's base period and review of claimant's monetary eligibility based upon this decision.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs