

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

TINA M GRIFFIN
Claimant

DATA DIMENSIONS CORP
Employer

APPEAL 23A-UI-05578-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/16/23
Claimant: Appellant (2R)

Iowa Code § 96.23 – Substitution of Wages Due to Receipt of Workers' Compensation

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 26, 2023, (reference 01) unemployment insurance decision that found claimant did not receive workers' compensation during three or more calendar quarters of the base period of her claim and was therefore ineligible to have her claim redetermined by substituting wages in calendar quarters prior to her base period. The parties were properly notified of the hearing. A telephone hearing was held on June 19, 2023. Claimant participated personally. The employer failed to respond to the hearing notice and did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant entitled to substitute calendar quarters prior to the regular base period due to receiving workers' compensation benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a quality assurance analyst for Data Dimensions Corp. beginning February 14, 2014. Claimant was injured at work on July 26, 2017. Claimant sustained a pinched ulnar nerve in her left elbow that required multiple surgeries. Claimant's employment with Data Dimensions Corp. ended on December 20, 2017.

Claimant filed a worker's compensation claim in February 2018 and she received temporary total disability (TTD) payments from February 2018 to the spring of 2019, and then again from the fall of 2019 to April 12, 2023. Claimant's administrative records indicate claimant earned \$405 in wages during the third calendar quarter of 2019 and \$630 in wages during the fourth calendar quarter of 2019. Claimant has otherwise performed no work and has earned no wages since injuring her ulnar nerve in July 2017. On April 07, 2019, claimant filed a claim for unemployment insurance benefits and she received maximum benefits of \$13,052.00 during that claim year.

Claimant has filed claim for unemployment insurance benefits with an original claim date of April 16, 2023. The regular base period for determining qualification for benefits was from January 1, 2022, through December 31, 2022. Claimant received TTD during all four quarters

of the base period. Claimant's administrative records for her base period show no wages reported by any employer as paid during that period. Claimant's administrative records show no wages reported by any employer over the past decade, aside from the wages reported in the third and four quarters of 2019 noted above.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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.

In this case, the claimant does qualify to have wage credits earned prior to the regular base period used to determine qualification for unemployment insurance benefits. Claimant did receive TTD in three or more calendar quarters of the regular base period. Additionally, claimant did not receive wages from insured work for three or more calendar quarters in the regular base period. As such, claimant is eligible to have wage credits earned during the four calendar quarters immediately preceding her regular base period in which she did not receive workers' compensation benefits used to determine qualification for unemployment insurance benefits.

DECISION:

The May 26, 2023, (reference 01) unemployment insurance decision 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.



Patrick B. Thomas
Administrative Law Judge

June 27, 2023
Decision Dated and Mailed

pbt/rvs

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.