

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA ITES**  
Claimant

**APPEAL NO: 12A-UI-10747-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 08-26-12**  
**Claimant: Appellant (2-R)**

Iowa Code § 96.23 - Workers' Compensation

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated September 6, 2012, reference 01, which held the claimant ineligible for substitution of wage credits, which affected her monetary determination. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 4, 2012. The claimant participated in the hearing with Attorney Corey Walker. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is eligible to substitute workers compensations earnings as wage credits on this claim.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was off work due to a work-related injury receiving temporary disability or healing period benefits March 29, 2011 through May 31, 2012. She filed for unemployment August 26, 2012. The claimant's base period starts in the first quarter of 2011 and runs through the second quarter of 2012. The receipt of temporary workers' compensation benefits did occur during the last two quarters of the base period.

The claimant was unable to work and provide services for three or more calendar quarters from her base period during the time the claimant received workers' compensation benefits for temporary total disability or during a healing period under the law. The claimant did not receive wages from insured work for two or more or more quarters and did not receive wages from insured work for another calendar quarter equal or greater than the amount required for a calendar quarter other than the calendar quarter in which her wages were the highest under section 94.4(4).

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

The claimant has received temporary total or healing period workers' compensation benefits since starting the unemployment base period. The claimant needs three quarters where no wages were received. The substitution is for temporary disability benefits only. The claimant meets that requirement. The request to have the claim redetermined is allowed, because the claimant has more than two quarters that qualify for substitution. The claimant does not have wages that disqualify her from substituting quarters when she was on temporary disability benefits. The claimant only has wages in the second quarter of 2011.

The remaining issue is whether the claimant is monetarily eligible for unemployment insurance benefits, since she had no wage records or lacks qualifying wage requirements. For the following reasons, the Administrative Law Judge finds the claimant is monetarily eligible.

Iowa Code § 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 above mentioned code section to apply, the claimant must have received temporary total disability or healing period benefits during three or more calendar quarters of her base period. She received temporary total benefits for at least three quarters of her base period. The claimant does qualify for unemployment insurance benefits, because she is monetarily eligible when her workers' compensation benefits are substituted.

**DECISION:**

The unemployment insurance decision dated September 6, 2012, reference 01, is reversed. The claimant is eligible to substitute workers' compensation earnings as wage credits.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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