

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE A HULEN

Claimant

APPEAL NO. 15A-UI-11694-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASSATT DRYWALL INC

Employer

OC: 09/13/15

Claimant: Appellant (6)

Section 96.5(5)b – Receipt of Deductible Workmen’s Compensation Benefits

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative’s decision dated October 15, 2015 (reference 01) which denied unemployment insurance benefits effective the week ending September 19, 2015; finding that the claimant was currently receiving workman’s compensation for a temporary disability and that the claimant’s weekly temporary disability payments were greater than the claimant’s unemployment insurance benefits. After due notice was provided, a telephone hearing was held on November 4, 2015. The claimant participated. The employer participated by Ms. Sherry Zaruba-Cassatt, Office Manager.

ISSUE:

At issue is whether the claimant was receiving workman’s compensation benefits for a temporary disability and whether it was deductible from his unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: The claimant began employment with Cassatt Drywall, Inc. on an unspecified date approximately 14 years ago. Mr. Hulen is employed as a full-time laborer and is paid \$18 per hour. His immediate supervisor is Dave Cassatt.

On approximately December 29, 2014, Mr. Hulen suffered a workman’s compensation injury to his knee and was off work for a period of time. It appears that Mr. Hulen returned to work at an unspecified date but opened a claim for unemployment insurance benefits with an effective date of September 13, 2015; claiming partial unemployment insurance benefits.

During this time, Mr. Hulen also was in receipt of workman’s compensation temporary disability payments. During this time, Mr. Hulen had a unique arrangement with the employer and the workman’s compensation carrier that allowed Mr. Hulen to receive workman’s compensation payments on the days that he did not work and were related to medical reasons that the claimant believed had been caused by his workman’s compensation injury. On other days

when the claimant did not work because he did not feel well and did not believe that his illness was attributable to his previous work injury, it appears that he did not claim workman's compensation benefits for those days. On some days the claimant did not have work for Mr. Hulen, and on other days the claimant worked and was paid at the rate of \$18 per hour.

It is the claimant's position that the Agency misapplied the dates that he received workman's compensation payments, which were attributable to his work injury. He also believes that he should be eligible to receive unemployment insurance benefits for the week ending September 19, 2015 but may be ineligible for benefits for other weeks because of workman's compensation benefits.

Although the administrative law judge has taken official notice of Mr. Hulen's administrative file, after a substantial period of time has passed there is not sufficient information in the claimant's administrative file to accurately reflect the days that the claimant worked, the days that he received workman's compensation benefits because missed time was attributable to his previous work injury, or the days that work was not available to him from the employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient. It is not.

Iowa Admin. Code r. 871-24.13(3)d provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which the payment is paid.

Because there is not sufficient information in the claimant's administrative file, and the evidence and the testimony taken in the record during the administrative hearing in this matter was not sufficient, the issue of Kyle Hulen's eligibility to receive unemployment insurance benefits, because of the receipt of workman's compensation temporary disability payments, is remanded to the Claims Division for a week by week investigation of the workman's compensation benefits the claimant received, the days that he worked, and the days the claimant did not work because of reasons that were not related to the workman's compensation claim.

The administrative law judge concludes that the matter should be remanded for investigation because the information brought at this time is not sufficient and the complex nature of the way the claimant received workman's compensation benefits requires a week by week wage investigation.

DECISION:

The representative's decision dated October 15, 2015 (reference 01), finding the claimant not eligible to receive unemployment insurance benefits effective the week ending September 19, 2015 as the claimant is currently receiving workman's compensation temporary disability payments that equal or exceed the claimant's unemployment benefit amount, is remanded for a week by week wage investigation; and the issuance of an appeal of the determination on the claimant's eligibility to receive unemployment insurance benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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