

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KENNETH L HANSEN**  
Claimant

**ADVANCED DRAINAGE SYSTEMS INC**  
Employer

**APPEAL 18A-UI-00178-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/26/17**  
**Claimant: Appellant (2)**

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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 December, 26, 2017, (reference 01) unemployment insurance decision that denied the claimant's request to substitute wages in calendar quarters prior to the base period. After due notice was issued, a telephone conference hearing was held on January 26, 2018. Claimant Kenneth L. Hansen participated and was represented by Marlon Mormann, Attorney at Law. Employer Advanced Drainage Systems, Inc. did not register a telephone number at which to be reached and did not participate in the hearing. Claimant's Exhibit A was received and admitted into the record. The administrative law judge took official notice of the administrative record.

**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 was off work receiving temporary total disability (TTD) workers' compensation benefits due to a work-related injury from December 11, 2015, to March 27, 2017, when he reached maximum medical improvement (MMI) and began receiving permanent partial disability (PPD) payments. The claimant filed a new claim for unemployment insurance benefits with an effective date of November 26, 2017. The regular base period for determining qualification for benefits was from the third quarter of 2016, through the second quarter of 2017. The claimant did receive \$130.95 in wages during the fourth quarter of 2016, which was the second quarter of the base period. He received TTD during three quarters of the base period.

**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 section 96.23 provides:

Base period exclusion.

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 Administrative Code rule 24.7(3) and (4) provide:

**24.7(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.

**24.7(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 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 two quarters and he lacked qualified earnings for a third quarter. Claimant is eligible to have wage credits from the first quarter of 2015 through the third quarter of 2015 substituted, as he began receiving TTD payments in the fourth quarter of 2015. The wage credits from these quarters have not been used to calculate benefits for any other claim year.

**DECISION:**

The December 26, 2017, (reference 01) unemployment insurance decision is reversed. The claimant is entitled to substitute calendar quarters prior to the regular base period.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn