

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARC A SUCHANEK**  
Claimant

**APPEAL NO. 12A-UI-07691-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STEWART DELL INC**  
Employer

**OC: 06/10/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.23 – Substitution of Wages Due to Receipt of Workers' Compensation  
Iowa Code § 96.4(4) – Monetary Eligibility and Subsequent Benefit Year

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 15, 2012 monetary record and requests to substitute wages in calendar quarters prior to the base period. After due notice was issued, a telephone conference hearing was held on July 19, 2012. Claimant participated and was represented by Richard Johnson, attorney at law. Employer participated through Company President and Owner Steve Stewart. Claimant's Exhibits 1 through 3 were admitted to the record.

**ISSUES:**

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

Is the claimant monetarily eligible for benefits after a substitution of quarters?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was off work and received temporary total disability (TTD) workers' compensation benefits due to a work-related injury from February 2010 through December 2010. He briefly tried to work (\$439.00 in the fourth quarter of 2010) but was unable to continue. He continued to receive TTD from then through March 23, 2012, when he reached maximum medical improvement (MMI) and began receiving permanent partial disability (PPD) payments effective March 24, 2012, which he continues to receive. The claimant filed a new claim for unemployment insurance benefits with an effective date of June 10, 2012. The regular base period for determining qualification for benefits was from the first quarter of 2011 through the fourth quarter of 2011. The claimant did not receive wages during any quarter of the base period. He received TTD during all quarters of the base period. Wages for the previous benefit year (June 5, 2011) were \$10,392 in the first quarter of 2010 and \$439 in the fourth quarter of 2010.

**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:

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 does qualify to have wage credits earned prior to the regular base period used to determine qualification for unemployment insurance benefits since he did receive TTD in three or more calendar quarters of the regular base period.

Iowa Code § 96.4-4 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

However, he is not monetarily eligible because the wages in the base period do not meet the requirement that he have a total of one and one-quarter times the high quarter wages.

**DECISION:**

The June 15, 2012 monetary record is affirmed. Claimant is not monetarily eligible for benefits, even with substitution of quarters.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/kjw

**NOTE TO EMPLOYER:**

If you wish to change your mailing address of record please access your account at:  
<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:  
<http://www.iowaworkforce.org/ui/uiemployers.htm> and  
[http://www.youtube.com/watch?v=\\_mpCM8FGQoY](http://www.youtube.com/watch?v=_mpCM8FGQoY)