

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARTHA E ANDERSON
Claimant

BROADLAWNS MEDICAL CENTER
Employer

APPEAL 18A-UI-10752-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/07/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 23, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not eligible to substitute wages in calendar quarters prior to the base period. The parties were properly notified of the hearing. A telephonic hearing was held on November 14, 2018. The claimant, Martha E. Anderson, participated and was represented by Corey J. L. Walker, Attorney at Law. The employer, Broadlawns Medical Center, participated through Julie Kilgore, Vice President of Human Resources; and Shelly Farrell, Human Resources Coordinator. Claimant's Exhibits A and B were received and admitted into the record without objection. 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 July 16, 2017, to July 16, 2018, when she 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 October 7, 2018. The regular base period for determining qualification for benefits was from the third quarter of 2017, through the second quarter of 2018. The claimant did receive wages during the third quarter of 2017 and received payout from a sign-on bonus during the fourth quarter of 2017 and the second quarter of 2018. She received TTD during four 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 Admin. Code r. 871-23.3(1) provides:

Wages.

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

In this case, claimant received wages from insured work for one of the four quarters of her base period. Additionally, claimant received a bonus during two of the four quarters of the base period. Under the administrative rule cited above, a bonus is classified as wages. The claimant does not qualify to have wage credits earned prior to the regular base period used to determine qualification for unemployment insurance benefits since she did receive wages in three quarters.

DECISION:

The October 23, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is not entitled to substitute calendar quarters prior to the regular base period.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn