

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY A HUTCHINSON
Claimant

APPEAL NO. 07A-UI-05924-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SANDE CONSTRUCTION AND SUPPLY
COMPANY INC**
Employer

OC: 05/27/07 R: 01
Claimant: Appellant (1)

Section 96.23 – Workers' Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 6, 2007, reference 01, which held claimant ineligible for substitution of wage credits. After due notice, a telephone conference hearing was scheduled for and held on June 28, 2006. Employer participated by Steve Sande, Vice President and Tonya Heier, Office Manager.

ISSUE:

The issue in this matter is whether claimant is eligible to substitute workers' compensation earnings as wage credits on this claim.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was off work due to a work-related injury receiving temporary disability or healing period benefits May 10, 2004 through March 30, 2006. Claimant filed for unemployment in May of 2007. Claimant's base period starts January 1, 2006 through December 31, 2006. The receipt of temporary workers' compensation benefits did occur during the base period for one quarter. Claimant had no other wages in quarters during the base period.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Claimant has not received three quarters of temporary total or healing period workers' compensation benefits since starting the unemployment base period. This disqualifies claimant for substitution of earnings. Permanent partial disability benefits cannot be used as a substitute for wage credits. The substitution is for temporary disability benefits only. The request to have the claim re-determined is denied because claimant had only one quarter of workers' compensation benefits during the base period.

DECISION:

The decision of the representative dated June 6, 2007, reference 01 is affirmed. Claimant is not eligible to substitute workers' compensation earnings as wage credits.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs