

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AZIZ TANJI
Claimant

APPEAL NO. 14A-UI-01063-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

OC: 01/12/14
Claimant: Appellant (1)

Section 96.23 – Substitution of Quarters-Wages/Worker’s Compensation

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated January 24, 2014, reference 01, that denied his request for a substitution of quarters due to receiving workers' compensation. A hearing was held on February 19, 2014. The claimant and Attorney H. J. Dane, participated. The employer did not participate. Interpreter Zahra Bouhouch, was available to participate. Claimant Exhibit A was received as evidence.

ISSUE:

The issue is whether the claimant should be allowed to substitute wages in calendar quarters prior to his base period due to receiving workers' compensation.

FINDINGS OF FACT:

The administrative law judge having considered the stipulation of the evidence and having considered evidence in the record finds that: The claimant last worked for the employer on or about October 9, 2011. The claimant has not worked for any subsequent employer and earned wages for insured work through the effective date of his unemployment claim January 12, 2014.

Claimant accepted a Compromise Settlement of his workers' compensation claim pursuant to Iowa Code section 85.35(3) for work-related injuries that occurred during his employment on September 17, October 2 and October 9, 2011. Claimant received a lump sum payment less attorney fees. The settlement agreement does not state the payment is based on temporary total disability (TTD) and/or permanent disability (TPD). Although the injury occurred prior to this agreement executed on April 29, 2013, it bases the payment with language extending from the date of the agreement. There is nothing in this agreement that specifies any portion of the payment is designated as TTD.

Dr. John Kulnlein issued a medical report for claimant on July 3, 2012. His review is based on a body as a whole. He determined there is no maximum medical improvement (MMI) and no impairment rating.

Claimant agreed to a stipulation of the evidence based on his offer of Exhibit A. He is requesting a substitution of three or more quarters of his base period (October 1, 2012 – September 30, 2013) that is a period he was unemployed and did not work.

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.

The administrative law judge concludes claimant's request to substitute base period quarters due to receiving workers' compensation benefits is denied.

The law requires the workers' compensation must be for TTD or during a healing period under Iowa Code sections 85.33, 85.34(1) or 85A.17. The Compromise Settlement is based on Iowa Code section 85.35(3) and it makes no determination that any portion of the lump sum payment is allocated for TTD.

Claimant's doctor letter is an examination of the body as whole without MMI and no impairment rating. This is further evidence there was no healing period determination with commensurate TTD compensation.

While there is no dispute claimant was unemployed from his October 2011 employment separation to his January 12, 2014 claim filing, he did not receive qualifying TTD or during a healing period that would make him eligible to substitute base period quarters back to a period where he earned qualifying wages.

DECISION:

The decision of the representative dated January 24, 2014, reference 01, is affirmed. The claimant's request to substitute base period quarters due to receiving TTD workers' compensation is denied.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs