

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Lucas State Office Building
Des Moines, Iowa 50319

Appeal Number: 05-IWDUI-010
OC: 05/09/04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**CHRISTINA S HUTTON
717 SEVENTEENTH STREET #6
DES MOINES IA 50314**

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

**IOWA WORKFORCE DEVELOPMENT
QUALITY CONTROL
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209**

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department . If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

DAN ANDERSON, IWD

(Administrative Law Judge)

February 18, 2005

(Decision Dated & Mailed)

Section 96.5-5b – Worker's Compensation/Temporary Disability

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated January 3, 2005, reference 05, which held that the claimant was receiving worker's compensation temporary disability that is fully deductible from unemployment insurance effective the week ending October 23, 2004, which reduces her weekly benefit amount.

After due notice was issued, a hearing was held by telephone conference call on January 31, 2005. The claimant did not participate. Iowa Workforce Development, Quality Control, participated by Auditor, Carol Roland.

The claimant offered a good cause for missing the hearing in her application for re-hearing. A telephone hearing was scheduled and held on February 18, 2005. The claimant participated. Carol Roland, Quality Control Auditor, participated.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having examined all of the evidence in the record, the finds: The claimant filed a claim for unemployment benefits with an effective date of May 9, 2004. The claimant's weekly benefit amount is \$300.00.

Auditor Roland of the Quality Control bureau of Iowa Workforce Development conducted a random audit review of the claimant's unemployment claim in October 2004. During the review, Auditor Roland learned that the claimant started worked for the Embassy Club on October 11, 2004, and that she suffered a job related injury on October 21. The claimant filed a worker's compensation claim on October 21, 2004, and she was awarded a temporary disability payment of \$254.03 per week (\$36.29 daily). The claimant received worker's compensation from October 22, 2004 through November 19, 2004.

The claimant did not receive her worker's compensation benefit until October 31, 2004. Although the claimant knew she would be reimbursed for any job related medical expense, she was unaware that she would receive compensation for missing work.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant received temporary worker's compensation disability that reduces her unemployment compensation effective October 17, 2004.

Iowa Code Section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

b. Compensation for temporary disability under the worker's compensation law of any state or under a similar law of the United States.

The administrative law judge concludes that the claimant's unemployment compensation is reduced by the amount of temporary disability worker's compensation she received effective October 22, 2004 pursuant to Iowa Code Section 96.5-5b. The Iowa Employment Security law provides that worker's compensation temporary disability is deductible from unemployment benefits. Auditor Roland determined that the claimant began receiving the temporary disability on October 22, 2004, and she applied a daily rate (\$36.29) for the week ending October 23, 2004 (two days - \$72.58), and the weekly rate of \$254 for October 30, 2004, which are weeks the claimant filed unemployment claims.

The claimant was unaware that she would be receiving worker's compensation for missing work due to her job related injury beginning October 22, 2004 that is the reason she did not report it when claiming for unemployment the weeks ending October 23, and October 30, 2004.

DECISION:

The decision of the representative dated January 3, 2005, reference 05, is AFFIRMED. The claimant's unemployment compensation is reduced effective October 17, 2004, due to receiving temporary worker's compensation disability.

rls