

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRUCE A MYERS**  
Claimant

**APPEAL NO. 17A-UI-12842-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAN SHED LLC**  
Employer

**OC: 12/03/17**  
**Claimant: Appellant (1)**

Iowa Code Section 96.23 – Substitution of Base Period Quarters

**STATEMENT OF THE CASE:**

Bruce Myers filed a timely appeal from the December 11, 2017, reference 01, decision that denied his request to have his unemployment insurance benefit eligibility redetermined by substituting wages from calendar quarters that preceded his base period. After due notice was issued, a hearing was held on January 5, 2018. Mr. Myers participated and presented additional testimony through Laura Holton. Julie Willard represented the employer. Exhibits 3 through 7, A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, WAGEA and WAGEC.

**ISSUE:**

Whether the claimant is eligible to have his unemployment insurance benefit eligibility redetermined through substitution of wages from calendar quarters that preceded the claimant's base period.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Bruce Myers established an original claim for benefits that was effective December 3, 2017. Mr. Myers' base period consists of the third and fourth quarters of 2016 and the first and second quarters of 2017. Mr. Myers had no wages for any of the four quarters of the base period. Mr. Myers received wages from the employer during quarters that preceded the base period. Those wages included \$3,888.00 in wages for the first quarter of 2015, \$3,925.12 in wages for the second quarter of 2015, \$4,004.80 in wages for the third quarter of 2015, \$4,692.89 in wages for the fourth quarter of 2015, and \$2,034.06 for the first quarter of 2016.

Mr. Myers was most recently employed by Can Shed, L.L.C. Mr. Myers commenced the employment in 2014. Mr. Myers last performed work for the employer in February 2016. On February 2, 2016, Mr. Myers was injured when he slipped and fell on ice on the employer's property while he was walking to a bus stop at the end of his shift. In connection with the injury,

Mr. Myers received worker's compensation benefits for *temporary total disability* (TTD) for the period of February 4, 2016 through August 25, 2016. At that point, a physician deemed Mr. Myers to have reached maximum medical improvement. Mr. Myers thereafter received worker's compensation benefits for *permanent partial disability* (PPD) for the period of August 26, 2016 through November 9, 2017. In November 2017, Mr. Myers entered into a settlement agreement with the employer and the employer's worker's compensation insurance carrier. Mr. Myers received a lump-sum settlement payment that was issued on November 14, 2017. Mr. Myers received no other direct-payment worker's compensation benefits other than those referenced above. Following settlement of the worker's compensation claim, Mr. Myers established the original claim for unemployment insurance benefits that was effective December 3, 2017.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.23(1), (2) provides:

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.

Mr. Myers is not eligible to have his unemployment insurance benefit eligibility redetermined through substitution of wages from calendar quarters that preceded his base period. Mr. Myers meets one prong of the substitution eligibility requirements in so far as he had no wages for any of the base period calendar quarters. Mr. Myers did not satisfy a second prong of the substitution eligibility requirement. The only worker's compensation benefits that counted toward the substitution of calendar quarters requirements were the benefits Mr. Myers received for *temporary total disability* (TTD) during the third quarter of 2016 for the period of July 1, 2016 through August 25, 2016. Under the statute, the worker's compensation benefits that Mr. Myers subsequently received for *permanent partial disability* (PPD) cannot be used to qualify Mr. Myers for substitution of calendar quarters. Mr. Myers's request to substitute calendar quarters is denied.

**DECISION:**

The December 11, 2017, reference 01, decision is affirmed. The claimant does not meet the eligibility requirements to have his unemployment insurance benefit eligibility redetermined through substitution of wages from calendar quarters that preceded his base period. The claimant's request to substitute calendar quarters is denied.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs