

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORMA SILVAS SANCHEZ
Claimant

APPEAL NO: 12A-UI-05047-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & COMPANY
Employer

**OC: 04/15/12
Claimant: Appellant (1)**

Iowa Code § 96.23 - Substitution of Quarters

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 25, 2012 determination (reference 01) that denied her request to have her claim be re-determined by substituting wages in calendar quarters prior to her base period. The claimant participated in the hearing with her attorney, Dennis McElwain. The employer did not respond to the hearing notice or participate in the hearing. Nina Redmond interpreted the hearing. During the hearing, Claimant Exhibits A, B and C were offered and admitted as evidence. Based on the evidence, the claimant's arguments, and the law, the administrative law judge denies the claimant's request to substitute wages in calendar quarter prior to her base period.

ISSUE:

Should the claimant's request to re-determine her claim by substituting wages in calendar quarters prior to her base period be granted?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of April 15, 2012. Her base period on this claim is January 1 through December 31, 2011. The claimant does not have any wages reported for 2011.

The claimant sustained a work-related injury on December 11, 2009. The injury required two surgeries, one on February 5, 2010, and the second on October 29, 2010. (Claimant Exhibit A.) At the claimant's April 20, 2011 examination, her physician released her to work with no work restrictions. The claimant requested that she not have any work restrictions. The employer continued some of her prescriptions and physical therapy. (Claimant Exhibit A. pg. 14 and Claimant Exhibit B.) Since the claimant was released to return to work with no restrictions in April 2011, the employer's workers' compensation insurance company ended her temporary total disability benefits. The workers' compensation insurance company then paid the claimant 25 weeks of permanent partial disability benefits. The 25 weeks of permanent partial disability benefits were paid to the claimant through October 9, 2011. Since the claimant did not have another appointment until November 3, the insurance company agreed to continue this

payment, permanent partial disability payments through November 3, 2011. (Claimant Exhibit B.).

REASONING AND CONCLUSIONS OF LAW:

The law allows wage substitution if a claimant is not monetarily eligible to receive benefits in her base period because she has been off work as the result of a work-related injury with a base period employer. Iowa Code § 96.23. Before a claimant is allowed to substitute wage credits, the claimant must have received temporary total disability benefits or healing benefits for three or more quarters in her base period.

In the claimant's situation, she received temporary total disability benefits from John Morrell's workers' compensation insurance company January 1 through April 2011. After April 2011, the claimant received permanent partial disability benefits or payments.

The claimant asserted she was in a healing period until November 2011. Therefore, the benefits she received through November 2011 should be considered temporary total disability benefits, not permanent partial disability benefits or payments. As of the date of the hearing, the claimant has petitioned the Work Compensation Commissioner to change the designation of the benefits she received May through November 2011 from permanent partial disability benefits to temporary total disability benefits. Since the law authorizes the Work Compensation Commissioner with the authority to designate benefits as temporary total or disability benefits or permanent partial disability benefits, the administrative law judge has no legal authority to change the designation of the benefits the claimant received May through November 2011.

The claimant received two quarters of temporary total disability benefits and is not eligible to substitute wages from previous quarters. The claimant remains monetarily ineligible to receive benefits as of April 15, 2012.

If the Worker's Compensation Commissioner changes the designation of the benefits the claimant received from May through November 2011, the claimant is not foreclosed from bringing this new information to the Department.

DECISION:

The representative's April 25, 2012 determination (reference 01) is affirmed. The claimant's request to substitute wages prior to her base period is denied because she does not have three quarters of temporary disability payments in her base period. If the claimant's petition to the Workers Compensation Commissioner is successful, she is not foreclosed from bringing this new information to the Department.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css