

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SCOTT S OGLESBY
APT A11
285 ROBINS RD
HIAWATHA IA 52233

FARMER MASONRY INC
PO BOX 216
MARION IA 52302

Appeal Number: 05A-UI-12192-LT
OC: 11-06-05 R: 03
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.

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.

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 Workforce Development. 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code § 96.5(5)b – Workers' Compensation/Temporary Total Disability Benefits
871 IAC 24.13(3)d – Workers' Compensation/Temporary Total Disability Benefits

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the November 23, 2005, reference 01, decision that denied claimant's request for substitution of quarters. After due notice was issued, a hearing was held on December 19, 2005. Claimant did participate and employer did not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was injured at work and received temporary total disability (TTD) workers' compensation benefits from March 18, 2004 and July 6, 2004; the first, second, and third quarters of 2004. He exhausted his unemployment insurance benefits for the claim year beginning August 8, 2004.

The base period for the current claim year beginning November 6, 2005 runs from the third quarter of 2004 (July 1, 2004) through the second quarter of 2005 (June 20, 2005).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the request to substitute calendar quarters due to receipt of workers' compensation temporary disability benefits is denied.

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:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

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

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

871 IAC 24.13(3)d provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which the payment is paid.

Since claimant received TTD only in the third quarter of 2004 during the current base period, claimant is statutorily ineligible for substitution of quarters and is not monetarily eligible for benefits.

DECISION:

The November 23, 2005, reference 01, decision is affirmed. Claimant's request for substitution of calendar quarters due to the receipt of TTD is denied.

dml/kjw