

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD D WYNNE
Claimant

APPEAL NO. 17A-UI-02798-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOFFREDO GARDENS INC
Employer

OC: 01/01/17
Claimant: Appellant (1)

Section 96.5-5 – Disqualification Due to Other Compensation
871 IAC 24.13(3)d – Fully Deductible Payments from Benefits
Section 96.23 – Base Period Exclusion

STATEMENT OF THE CASE:

Richard Wynne (claimant) appealed a representative's February 28, 2017, decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits from his work with Loffredo Gardens (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 6, 2017. The claimant was represented by his attorney Stephen Rubes and participated personally. The employer participated by Michael Vilez, Human Resources Manager. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant qualifies to substitute workers' compensation benefits as wage credits on his claim.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant performed work for the employer from September 10, 2005, to April 23, 2014, as a full-time delivery driver/laborer. He suffered a work-related injury on June 8, 2013, and received disability payments from July 2013, to December 24, 2016. The claimant received total temporary disability workers' compensation benefits from the third quarter of 2013, through the third quarter of 2014.

On January 1, 2017, the claimant filed for unemployment insurance benefits. His base period of employment was from the fourth quarter of 2015, through the third quarter of 2016. The claimant had no wage credits during his base period of employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant cannot use workers' compensation benefits as wage credits on this unemployment claim.

Iowa Code § 96.5(5) provides:

An individual shall be disqualified for benefits:

5. Other compensation.

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

- (1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.
- (2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.
- (3) 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 subparagraph, 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.

b. 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", subparagraph (1), (2), or (3), 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.

Iowa Admin. Code r. 871-24.13(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 such payment is paid.

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.

When a claimant receives workers' compensation during three or more calendar quarters of the base period of his claim, the claimant can substitute calendar quarters before the claimant's base period. The claimant did not receive workers' compensation for total temporary disability during three or more calendar quarters in the claimant's current base period. As such, the claimant's request to have his claim redetermined by substituting calendar quarters before his base period is denied.

The claimant's testimony was internally inconsistent. The administrative law judge finds the claimant's documents to be more credible than his testimony.

DECISION:

The February 28, 2017, representative's decision (reference 01) is affirmed. The claimant's request to have his claim redetermined by using workers' compensation benefits as wage credits on this unemployment claim is denied.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs