

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFERY D BUBOLTZ
Claimant

APPEAL NO. 06A-UI-11000-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WRIGHT TREE SVC INC
Employer

**OC: 10/22/06 R: 01
Claimant: Appellant (1)**

Section 96.23 – Workers’ Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 9, 2006, reference 01, which held claimant ineligible for substitution of wage credits. After due notice, a telephone conference hearing was scheduled for and held on November 30, 2006.

ISSUE:

The issue in this matter is whether claimant is eligible to substitute workers’ compensation earnings as wage credits on this claim.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was off work due to a work-related injury receiving temporary disability or healing period benefits May 1, 2005 through October 15, 2005. Claimant filed for unemployment in October of 2006. Claimant’s base period is July 1, 2005 through June 30, 2006. The receipt of temporary workers’ compensation benefits did not occur during three quarters of the base period. Permanent Partial Disability workers’ compensation benefits cannot be used for substitution.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.23 provides:

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:

1. The individual did not receive wages from insured work for three calendar quarters.

2. 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.

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.

Claimant has not received sufficient temporary total or healing period workers' compensation benefits since starting the unemployment base period. This disqualifies claimant for substitution of earnings. Permanent partial disability benefits cannot be used as a substitute for wage credits. The substitution is for temporary disability or healing period benefits only. The request to have the claim redetermined is denied.

DECISION:

The decision of the representative dated November 9, 2006, reference 01 is affirmed. Claimant is not eligible to substitute workers' compensation earnings as wage credits.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs