

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY E MCDOWELL
Claimant

APPEAL NO. 08A-UI-00440-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYERS MUTUAL CASUALTY CO
Employer

**OC: 12/23/07 R: 02
Claimant: Respondent (1)**

Section 96.23 – Base Period Exclusion

STATEMENT OF THE CASE:

Employers Mutual Casualty Company (EMC) filed an appeal from a representative's decision dated January 4, 2008, reference 01, which held that Rodney McDowell would be allowed to substitute wages from quarters prior to the base period of his claim. After due notice was issued, a hearing was held by telephone on January 29, 2008. Mr. McDowell participated personally. The employer participated by Harold Capps, Director of Facilities; Linda Nutting, Claims Adjustor; and Jerry Crawford, Chief Engineer. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. McDowell should be allowed to substitute quarters of wages earned prior to the base period of his claim.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. McDowell began working for EMC on November 25, 1996 and last performed services on December 21, 2005. The employer considers his separation date to be June 2, 2006. During the course of his employment, Mr. McDowell had a work-related injury for which he received worker's compensation benefits.

Mr. McDowell filed a claim for job insurance benefits effective December 23, 2007. The base period of his claim consists of the period from July 1, 2006 through June 30, 2007. He did not receive wages from any employer during the base period of his claim. He received worker's compensation throughout the base period of his claim. Mr. McDowell had wages reported by EMC for the second, third, and fourth quarters of 2005 and the second quarter of 2006.

Mr. McDowell received permanent partial disability payments (PPD) through EMC from November 1, 2007 through January 10, 2008. He received temporary total disability payments (TTD) from December of 2005 through October 25, 2007. He resumed receiving PPD payments effective October 29, 2007 and continues to receive PPD payments.

REASONING AND CONCLUSIONS OF LAW:

In order to receive job insurance benefits, an individual must have a specified amount of wages during the base period of the claim. The base period consists of the first four of the last five calendar quarters prior to the quarter in which an application for benefits is filed. See 871 IAC 24.1(11). Mr. McDowell did not have any wages reported during the base period of his claim (July 1, 2006 – June 30, 2007) because he was receiving worker's compensation during that time. Where the lack of wage credits is due to the individual's receipt of worker's compensation, the law allows the individual to substitute quarters of wages earned prior to the base period of the claim. Iowa Code section 96.23.

Because Mr. McDowell did not have earnings during his base period due to being on worker's compensation, it was proper to substitute quarters of wages earned prior to the base period. Therefore, the wages earned with EMC during the second, third, and fourth quarters of 2005 were properly substituted into Mr. McDowell's claim to make him monetarily eligible to receive job insurance benefits.

Mr. McDowell is currently receiving worker's compensation through EMC. The only worker's compensation benefits that are deductible from the job insurance claim are those paid for temporary disability. See 871 IAC 24.13(3)d. Mr. McDowell has not received TTD payments since filing his claim effective December 23, 2007. Because the benefits he currently receives are PPD payments, they are not deductible from his weekly job insurance benefits.

DECISION:

The representative's decision dated January 4, 2008, reference 01, is hereby affirmed. Workforce Development properly substituted wages earned prior to the base period of Mr. McDowell's claim. He has not received deductible payments from or through the employer since filing his claim effective December 23, 2007. Benefits are allowed in full, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css