

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE BRURING
Claimant

APPEAL 15A-UI-12975-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**OC: 04/05/15
Claimant: Appellant (4-R)**

Iowa Code § 96.5(5)b – Workers' Compensation/Temporary Total Disability Benefits
Iowa Admin. Code r. 871-24.13(3)d – Workers' Comp/Temporary Total Disability Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 12, 2015 (reference 02) unemployment insurance decision that denied benefits based upon receipt of . The parties were properly notified about the hearing. A telephone hearing was held on December 11, 2015. Claimant participated. Employer participated through human resources representative David Dalmasso.

ISSUE:

Is the claimant eligible for unemployment insurance benefits while receiving temporary total disability workers' compensation benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a truck driver. He was separated from employment on November 14, 2015. His last day of work was April 3, 2015. He received workers' compensation (WC) temporary total benefits (TTD) of \$560.67 per week exceeding his weekly benefit amount (WBA), which is \$416, through October 1, 2015; with a final payment of \$330.08. No payments were made after that date. A DOT physical made him ineligible to drive so he was released from employment. He filed a claim for but did not receive unemployment insurance (UI) benefits for the two weeks ending April 18, 2015 and the three weeks ending October 31, 2015. He has filed no other weekly claims as of the hearing date. The separation and claimant's ability to and availability for work since October 1, 2015, has not yet been addressed by the Benefits Bureau of IWD.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not eligible for UI benefits while receiving TTD workers' compensation benefits.

Iowa Code § 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.

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 the payment is paid.

Since claimant received TTD he was considered unable to work and was not eligible to receive UI benefits at the same time. Benefits are withheld for the period through October 1, 2015; when he no longer received TTD.

DECISION:

The November 12, 2015 (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant is not eligible for UI benefits while he received TTD benefits through October 1, 2015.

REMAND:

The separation and ability to and availability for work issues, delineated in the findings of fact, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. While the issues and any appeals are pending, claimant should file weekly continued claims to preserve any potential entitlement to UI benefits. See, Claimant Handbook <http://www.iowaworkforce.org/ui/handbook.htm>.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/can