

**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**

**LARRY J KRALIK  
605 N WALNUT ST  
CRESTON IA 50801**

**CITY OF CRESTON  
ATTN CITY CLERK  
PO BOX 449  
CRESTON IA 50801**

**Appeal Number: 05A-UI-07823-CT  
OC: 07/17/05 R: 03  
Claimant: Appellant (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.23 – Substitution of Quarters/Base Period Exclusion

STATEMENT OF THE CASE:

Larry Kralik filed an appeal from a representative's decision dated August 1, 2005, reference 03, which denied his request to substitute calendar quarters. After due notice was issued, a hearing was held by telephone on August 17, 2005. Mr. Kralik participated personally and Exhibit A was admitted on his behalf. The employer participated by Joe Parker, City Administrator.

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. Kralik was employed by the City of Creston for approximately six years ending January 4, 2004. He worked full time in wastewater treatment

and maintenance. Mr. Kralik sustained a work-related injury on January 4, 2004, and was paid worker's compensation benefits. He was paid temporary total disability compensation from the date of injury through July 19, 2004. Thereafter, he received indemnity benefits for some weeks and permanent partial disability benefits for some weeks. The indemnity benefits were first paid for the week of August 2, 2004, and last paid for the week of March 28, 2005. During that period, there were approximately 11 weeks for which he was paid permanent partial disability benefits.

Mr. Kralik filed his claim for job insurance benefits effective July 17, 2005. The base period of his claim consists of the second, third, and fourth calendar quarters of 2004 and the first quarter of 2005. He has wage credits in only the third quarter of 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Kralik should be allowed to substitute quarters of wage credits earned before the base period of his claim. A substitution is allowed if an individual lacks insured earnings in three or more calendar quarters of the base period. Mr. Kralik meets this criteria, as he has insured earnings in only one of the four quarters of his base period. The individual also must have received worker's compensation benefits during those same three or more quarters. The worker's compensation must have been for temporary total disability, for a healing period, or indemnity insurance benefits. See Iowa Code section 96.23.

The documentary evidence submitted by Mr. Kralik (Exhibit A) consists of stubs from checks sent him by the employer's worker's compensation carrier. The stubs identify whether the payment was temporary total disability, permanent partial disability, or indemnity benefits. The administrative law judge has excluded those payments designated as being for permanent partial disability as receipt of such benefits do not justify a substitution pursuant to section 96.23. However, even excluding the permanent partial disability benefits, the evidence establishes that Mr. Kralik had temporary total disability and indemnity insurance benefits during the three quarters for which he did not receive insured wages. Based on the foregoing, the administrative law judge concludes that he has satisfied the requirements for substituting quarters. Therefore, quarters of wages earned before the base period shall be substituted into his claim.

#### DECISION:

The representative's decision dated August 1, 2005, reference 03, is hereby reversed. Mr. Kralik's request to substitute wage credits earned before the base period of his claim is allowed.

cfc/kjw