

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL R CALSYN
Claimant

APPEAL NO. 08A-UI-07053-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/22/08 R: 04
Claimant: Respondent (1)

Section 96.2-3 – Substitution of Base Period Quarters

STATEMENT OF THE CASE:

The employer has filed an appeal from a representative's decision dated July 1, 2008, reference 02, which held the claimant met the requirements of the workers' compensation provisions of law to substitute base period wages. After due notice a telephone conference hearing was held on August 26, 2008 in conjunction with appeal number 08A-UI-06824-NT. The claimant participated and testified personally. Participating on the claimant's behalf was Ms. Leann Tyler, Attorney at Law. Employer participated by Ms. Quinn Vandenberg, Attorney at Law, and witness, Chris Moran.

ISSUE:

The issue in this matter is whether the claimant has met the requirements of the workers' compensation provision that allow substitution of base period wages.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was unable to work and provide services for three or more calendar quarters from her base period during the time the claimant received workers' compensation benefits for temporary total disability or during a healing period under the law. Ms. Calsyn did not receive wages from insured work for two or more or more quarters and did not receive wages from insured work for another calendar quarter equal or greater than the amount required for a calendar quarter other than the calendar quarter in which her wages were the highest under section 94.4(4).

REASONING AND CONCLUSIONS OF LAW:

Based upon the evidence in the record, the administrative law judge concludes that the claimant has met the requirements of the law to allow substitution of consecutive calendar quarters immediately preceding the base period as the claimant had three or more calendar quarters in her base period in which she received workers' compensation benefits for temporary total disability or a healing period under the provisions of the 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.

For the reasons stated herein, the administrative law judge concludes that the fact-finder's decision is correct in this matter.

DECISION:

The representative's decision dated July 1, 2008, reference 02, is hereby affirmed. The claimant met the requirements of the law to substitute base period wages.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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