

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GARY L WILLIAMS
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL 19A-UI-03045-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/12/16
Claimant: Appellant (2R)**

Iowa Code § 96.23 – Substitution of Wages Due to Receipt of Workers' Compensation

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 9, 2019 (reference 01) decision that denied the claimant's request to substitute wages in calendar quarters prior to the base period. After due notice was issued, a telephone conference hearing was held on May 1, 2019. Claimant participated. Employer participated through Mai Lor, Hearing Representative.

ISSUE:

Is the claimant entitled to substitute calendar quarters prior to the regular base period due to receiving workers' compensation benefits?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was off work receiving temporary total disability (TTD) workers' compensation benefits due to a work-related injury from December 8, 2017 to October 1, 2018 when he reached maximum medical improvement (MMI) and began receiving permanent partial disability (PPD) payments. The claimant filed a new claim for unemployment insurance benefits with an effective date of March 24, 2019. The regular base period for determining qualification for benefits was from the Fourth quarter of 2017 through the Third quarter of 2018. The claimant did receive wages during the Fourth quarter of the base period. Claimant received TTD during three quarters of the base period.

Claimant began working for employer on November 9, 2016. His starting wage was \$15.00 an hour and his wage did not change during his employment with this employer. He does have wages in at least three quarters immediately preceding the base period.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is entitled to substitute calendar quarters prior to the regular base period due to receiving workers' compensation benefits.

Iowa Code § 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.

The claimant does qualify to have wage credits earned prior to the regular base period used to determine qualification for unemployment insurance benefits since he did receive TTD in three or more calendar quarters of the regular base period.

DECISION:

The unemployment insurance decision dated April 9, 2019 (reference 01) is reversed. The claimant is entitled to substitute calendar quarters prior to the regular base period.

REMAND: This matter is remanded to the Benefits Bureau for a substitution of wages from three or more consecutive calendar quarters, immediately preceding claimant's base period. The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn