

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN M SCHREURS
Claimant

HARTOG ELEVATOR INC
Employer

APPEAL 18A-UI-10892-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/07/18
Claimant: Appellant (2R)

Iowa Code § 96.23 – Substitution of Wages Due to Receipt of Workers' Compensation
Iowa Admin. Code r. 871-24.7 – Workers' Compensation or Indemnity Insurance Exclusion and Substitution

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 24, 2018 (reference 01) unemployment insurance decision that found claimant worked during at least three calendar quarters of the base period of his claim, therefore his request to have his claim redetermined by substituting wages in calendar quarters prior to his base period was not allowed. The parties were properly notified of the hearing. A telephone hearing was held on November 20, 2018. The claimant, John M. Schreurs, participated personally. Jessica Schreurs represented the claimant. The employer, Hartog Elevator Inc., participated through witness Eldon Krikke. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

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 reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a field man beginning January 1, 2016. The claimant was injured at work on August 15, 2017 and then again on September 12, 2017. He sustained a traumatic brain injury. A worker's compensation claim was filed and claimant received temporary total disability ("TTD") payments from September 15, 2017 until October 1, 2018. Between September 15, 2017 and October 1, 2018, claimant only worked and earned wages for 19 days in April of 2018.

The claimant filed a claim for unemployment insurance benefits with an original claim date of October 7, 2018. The claimant's base period is July 1, 2017 through June 30, 2018. Claimant's administrative records for his base period show the following wages reported by the employer as paid during that period:

2017/3	2017/4	2018/1	2018/2
\$14,146	\$923	\$0	\$765

Claimant did not work and earn wages in the fourth quarter of 2017; however, the employer made a donation to claimant's church to be used toward tuition for the claimant's minor child to attend the Christian school. The amount of the donation was \$923.08. Mr. Krikke did not know why this amount was reported as wages to Iowa Workforce Development when it was a donation to the claimant's church. Claimant did not request this donation from the employer and the donation was not remuneration for personal services rendered by the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is entitled to substitute calendar quarters prior to the regular base period pursuant to Iowa Code § 96.23.

Iowa Code § 96.23 provides:

1. 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:

- a. The individual did not receive wages from insured work for three calendar quarters.
- b. 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, paragraph "a".

2. 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.

Iowa Admin. Code r. 871—24.7 (1-4) provides:

- (1) An individual who has received workers' compensation under Iowa Code chapter 85 during a healing period or temporary total disability benefits or indemnity insurance benefits for an extended period of time and has insufficient wage credits in the base period may qualify for unemployment insurance benefits. Under specific circumstances as described below, the department shall exclude certain quarters in the base period and substitute three or more consecutive calendar quarters immediately preceding the base period which were prior to the workers' compensation or indemnity insurance benefits.
- (2) An individual may receive workers' compensation during a healing period or temporary total disability benefits or indemnity insurance benefits until the individual returns to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.

- (3) The department shall make an initial determination of eligibility for unemployment insurance benefits. If the individual has no wage records or lacks qualifying wage requirements, the department shall substitute three or more calendar quarters of the base period with those three or more consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation benefits or indemnity insurance benefits. The qualifying criteria for substituting quarters in the base period are that the individual:
- a. Must have received workers' compensation benefits under Iowa Code chapter 85 or indemnity insurance benefits for which an employer is responsible during the excluded quarters, and
 - b. Did not receive wages from insured work for:
 - (1) Three or more calendar quarters in the base period, or
 - (2) Two calendar quarters and lacked qualifying wages from insured work during another quarter of the base period.
- (4) Subject to the provisions of subrule 24.7(3), the department shall use the following criteria for allowances and disqualifications.
- a. Allowances. When the allowance criteria are met, the department shall always exclude and substitute at least three quarters of the base period if the individual received workers' compensation or indemnity insurance benefits in:
 - (1) Four base period quarters with no earnings in at least two of the quarters and the individual lacks qualifying earnings, the department will exclude and substitute all four quarters of the base period.
 - (2) Three no earnings base period quarters, with or without earnings in the fourth quarter, the fourth quarter remains in the base period and the department will exclude and substitute only three quarters in the base period.
 - b. Disqualifications. The request for retroactive substitution of base period quarters shall be denied if the individual received workers' compensation or indemnity insurance benefits in:
 - (1) At least three base period quarters but the individual is currently monetarily eligible with an established weekly and maximum benefit amount.
 - (2) At least three base period quarters and the individual has base period wages in three or more of the base period quarters, but the claim lacks qualifying earnings.
 - (3) Less than three base period quarters.

The claimant did receive TTD payments during all four calendar quarters of his base period. Those payments occurred beginning September 15, 2017 (third quarter of 2017) and continued through the second quarter of 2018. Claimant did work and receive wages in the third quarter of

2017 and the second quarter of 2018; therefore, Iowa Code § 96.23(1)(a) does not apply to this case.

The amount reported by the employer during the fourth quarter of 2017 was not wages because it was not remuneration for personal services. Iowa Code § 96.19(41); Iowa Admin. Code r. 871-23.3(1). Further, the claimant did not work or receive wages from insured work for two calendar quarters (fourth quarter of 2017 and first quarter of 2018), thus satisfying the first prong of Iowa Code § 96.23(1)(b).

In order to establish a monetarily eligible claim, the claimant must have earned wages of at least \$1,610.00 in one quarter and at least \$800.00 in a different quarter for the program year July 1, 2018 through July 6, 2019. <https://www.iowaworkforcedevelopment.gov/monetary-eligibility>; see also Iowa Code § 96.4(4)a. When analyzing the second prong of Iowa Code § 96.23 (1)(b), the claimant must not have received 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(4)(a).

In this case, the claimant received \$765.00 during the second quarter of 2018 when he went back to work in April of 2018. This amount is not equal to or greater than the amount required under Iowa Code § 96.4(4)a. Further, Iowa Admin. Code r. 871-24.7(3)(b) provides that a claimant is eligible for substitution of calendar quarters if they did not receive wages from insured work during two calendar quarters and lacked qualified wages from insured work during another calendar quarter of the base period. Claimant lacked qualifying wages from insured work during the second quarter of 2018. As such, claimant is eligible to have his claim redetermined by substituting calendar quarters before his base period pursuant to Iowa Admin. Code r. 871-24.7(4)a(1).

DECISION:

The unemployment insurance decision dated October 24, 2018 (reference 01) is reversed. The claimant is entitled to substitute calendar quarters prior to the regular base period pursuant to Iowa Admin. Code r. 871-24.7(4)a(1).

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for a redetermination of the claimant's base period and review of claimant's monetary eligibility based upon this decision.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs