

**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**

**PAUL D ROBINSON
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**Appeal Number: 06A-UI-05759-JTT
OC: 05/21/06 R: 03
Claimant: Appellant (1)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.23 – Substitution of Wages Earned During Calendar Quarters Prior to the Base Period

STATEMENT OF THE CASE:

Paul Schneider filed a timely appeal from the May 26, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 21, 2006. Mr. Robinson participated and was represented by attorney Mark Chipokas. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not respond. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency administrative file.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 31, 2003, Paul Robinson commenced his employment with Schneider National Carriers

as a semi truck driver. On June 17, 2004, Mr. Robinson suffered injury in the course of his employment and established a workers' compensation claim. On August 6, 2004, Mr. Robinson began to receive workers' compensation benefits for temporary total disability. On April 19, 2005, Mr. Robinson's workers' compensation benefits converted to benefits for permanent partial disability. On May 10, 2006, Mr. Robinson separated from the employment because he could no longer operate a semi truck.

On May 21, 2006, Mr. Robinson established a claim for benefits. On May 26, 2006, an Agency representative denied benefits and provided the following explanation for the decision:

You did not receive workers' compensation during three or more calendar quarters of the base period of your claim. The base period of your claim is from 01/01/05 through 12/31/05. Our records indicate you received workers' compensation from August 6, 2004 through June 20, 2005. Therefore, your request to have your claim redetermined by substituting wages in calendar quarters prior to your base period is not allowed.

REASONING AND CONCLUSIONS OF LAW:

The question is whether, in light of his receipt of workers' compensation benefits during the base period, Mr. Robinson qualifies to have his eligibility for unemployment insurance benefits determined based on substituted wages earned in calendar quarters prior his base period.

"Base period" means the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim. Iowa Code section 96.19(3). Mr. Robinson established a claim for benefits in the second quarter of 2006. Thus, the base period upon which his eligibility for benefits would ordinarily be determined would be the first through fourth quarters of 2005.

871 IAC 24.1(11) provides as follows:

Base period. The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective *with the following exception*. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

- a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or
The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

The exception referenced in 871 IAC 24.1(11) is drawn from Iowa Code section 96.23, which provides as follows:

Base period exclusion.

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 evidence in the record establishes that Mr. Robinson received benefits for temporary total disability (TTD) beginning August 6, 2004 and ending April 19, 2005. This period included all of the first quarter of 2006 and part of the second quarter of 2006. Thus, Mr. Robinson received TTD benefits only during the first *two* quarters of the base period.

Iowa Code section 85.34(1) defines the "healing period" as follows:

Permanent disabilities.

Compensation for permanent disabilities and during a healing period for permanent partial disabilities shall be payable to an employee as provided in this section. In the event weekly compensation under section 85.33 had been paid to any person for the same injury producing a permanent partial disability, any such amounts so paid shall be deducted from the amount of compensation payable for the healing period.

1. *Healing period.* If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, whichever occurs first.

Thus, the healing period began on the date of the injury, June 17, 2004. The evidence indicates that Mr. Robinson was never medically capable of returning to the work or to substantially similar work. Instead, the evidence indicates that the healing period ended on April 19, 2005, the date Mr. Robinson's benefits converted to permanent partial disability benefits because it was medically indicated that significant improvement from the injury was not anticipated. The healing period included all of the first quarter of 2006 and part of the second quarter of 2006. In other words, the healing period included only the first *two* quarters of the base period.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Robinson is not eligible to substitute wages earned during calendar quarters prior to his base period because he did not receive total temporary disability

benefits and/or was not in a “healing period” for three or more quarters of the base period as required by the statute and the Workforce Development Rule. See Iowa Code section 96.23. See also 871 IAC 24.1(11).

DECISION:

The Agency representative’s decision dated May 26, 2006, reference 01, is affirmed. The claimant is not eligible to substitute wages earned during calendar quarters prior to his base period because he did not receive total temporary disability benefits and/or was not in a “healing period” for three or more quarters of the base period as required by Iowa Code section 96.23 and 871 IAC 24.1(11).

jt/pjs