

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Lucas State Office Building
Des Moines, Iowa 50319

Appeal Number: 06-IWDUI-212
OC: 05/14/06
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

KIKI A DONOVAN
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DAN ANDERSON, IWD

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 the Department . 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)

December 8, 2006

(Decision Dated & Mailed)

Section 96.5-5b – Worker's Compensation/Temporary Disability

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated November 6, 2006, reference 01, which held that the claimant was receiving worker's compensation temporary disability that is fully deductible from unemployment insurance effective May 14, 2006 through the week ending June 03, 2006, which makes her ineligible from receiving benefits for that period.

After due notice was issued, a hearing was held by telephone conference call on December 4, 2006.

Attorney, Pete Leehey, participated for the claimant. Iowa Workforce Development, Investigation and Recovery, and the employer, KTJC, did not participate.

FINDINGS OF FACT:

The administrative law judge, having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of May 14, 2006. The claimant claimed for and received unemployment benefits in the amount of \$648 during a period from May 14, 2006 through the week ending June 3, 2006.

The department received a letter from Attorney Mahmutagic on behalf of KTJC Transport that the claimant was paid temporary total worker's compensation in the amount of \$1,947.32 covering the dates from May 9, 2006 through June 5, 2006. A department representative divided the benefit amount by the four-week period and applied it (\$486.83) to each week, as deductible earnings. Since the workers compensation exceeded the claimant's benefit amount, she was ineligible for that period.

Claimant's Attorney Leehey offered a professional statement that the claimant did not receive the \$1,947.32 and/or any temporary workers compensation. The only amount the claimant has received from her employer to date is a \$500 payment to apply toward a medical exam.

The employer failed to respond to the hearing notice. The department elected not to participate.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant received temporary worker's compensation disability that makes her ineligible for benefits during the period from May 14, 2006 to June 3, 2006.

Iowa Code Section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

b. Compensation for temporary disability under the worker's compensation law of any state or under a similar law of the United States.

The administrative law judge concludes that the claimant is NOT disqualified from receiving benefits for the three-weeks ending June 3, 2006, as she did not receive any temporary total workers (TTD) compensation from her employer pursuant to Iowa Code Section 96.5-5a. The only payment the claimant has received on behalf of her employer is for a medical examination that is not deductible from unemployment benefits.

DECISION:

The decision of the representative dated November 6, 2006, reference 02, is REVERSED. The claimant is NOT disqualified for three-weeks ending June 3, 2006, as she has not received any TTD payments.

rls