

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

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Appeal Number: 04A-UI-10089-MT  
OC: 08/29/04 R: 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.23 - Workers' Compensation Quarters Substitution

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 14, 2004, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 12, 2004. Claimant participated personally and was represented by Dennis McElwain, Attorney at Law. Employer failed to respond to the hearing notice and did not participate. Exhibit A was admitted into evidence

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was injured at Storm Lake, Iowa June 12, 3003 and received a healing period workers' compensation benefit for one year. Claimant was paid workers' compensation benefits under the law of the state of Nebraska because of a similar injury he had incurred some time previous. Claimant has filed a claim in Iowa requesting benefits under Chapter 85 of the Iowa Workers' Compensation law. No benefits have been paid under Iowa law to date of this hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether calendar quarters can be substituted due to the receipt of Iowa workers' compensation benefits.

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.

The administrative law judge holds that claimant is not entitled to an exclusion of quarters during the base period because the workers' compensation benefits were paid pursuant to the laws of another state. While the evidence clearly indicates this as an Iowa injury it nevertheless was not paid under Chapter 85. See rule 871IAC24.7(3)A. The request to substitute calendar quarters is denied.

DECISION:

The decision of the representative dated September 14, 2004, reference 01, is affirmed. Claimant's request to substitute calendar quarters is denied.

mdm\s