

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GRAHAM L CROOK**  
Claimant

**MIDWEST VIKING INC**  
Employer

**APPEAL NO. 23A-UI-10087-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/03/23**  
**Claimant: Appellant (2)**

Iowa Code § 96.23 – Substitution of Wages due to Receipt of Worker’s Compensation  
Iowa Code § 96.3-4 – Monetary Record

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 12, 2023, reference 01, which held claimant ineligible for substitution of wage credits. After due notice, a telephone conference hearing was scheduled for and held on November 9, 2023. Employer participated by Brad Steffen. Claimant’s exhibit A was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant is eligible to substitute workers compensations earnings as wage credits on this claim.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was off work due to a work related injury receiving temporary disability or healing period benefits May 5, 2022 through August 5, 2023. Claimant filed for unemployment in September of 2023. Claimant’s base period starts April 1, 2022 through March 31, 2023. The receipt of temporary workers compensation benefits did occur during the base period.

Claimant’s monetary record shows wages of \$9,344.41 in the 2<sup>nd</sup> quarter of 2022 and \$1,095.00 in the 3<sup>rd</sup> quarter of 2022. Claimant’s monetary record does not show wages in either the fourth quarter of 2022 or the first quarter of 2023.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.23(1), (2) 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:

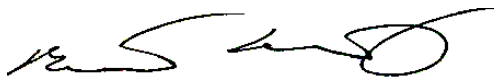
- a. The individual did not receive wages from insured work for three calendar quarters.
  - b. The individual did not receive wages from insured work for two calendar quarters and did not receive wages from insured work for another calendar quarter equal to or greater than the amount required for a 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.

Claimant has received temporary total or healing period Worker's Compensation benefits since starting the unemployment base period. Claimant received Worker's Compensation benefits from May 6, 2022 through August 15, 2023. The dates listed in the unemployment insurance decision dated October 12, 2023 (ref 01) stated the dates when claimant received Workers Compensation benefits incorrectly. Both claimant and employer acknowledged claimant receipt of Workers Compensation benefits into August 2023, not September 2022 as mentioned in the decision. This qualifies claimant for substitution of earnings. The substitution is for temporary disability or healing period or indemnity insurance benefits only. The request to have the claim re-determined is allowed.

The claimant shall be allowed to have three quarters of wages that immediately preceded the first quarter used to calculate claimant's monetary record. Claimant's base period shall include wages from the 3d quarter of 2021 through the second quarter of 2022.

**DECISION:**

The decision of the representative dated October 12, 2023, reference 01 is reversed. Claimant is eligible to substitute prior quarters of earnings for quarters with workers compensation temporary disability as wage credits.



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**Blair Bennett** | Administrative Law Judge II  
Iowa Department of Inspections, Appeals, & Licensing

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November 13, 2023  
Decision Dated and Mailed

BAB/jkb

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *There may be a filing fee to file the petition in District Court.*

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.