

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

VALLERIE G LAWSHE
Claimant

APPEAL NO. 15A-UI-12533-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BLUE RIBBON HOLDINGS LLC
Employer

OC: 10/11/15
Claimant: Appellant (1)

Section 96.23 – Substitution of Workman’s Compensation Benefits in Base Period
871 IAC 24.7(2) – Workman’s Compensation Substitution

STATEMENT OF THE CASE:

Vallerie Lawshe, the claimant, filed a timely appeal from a representative’s decision dated November 5, 2015 (reference 01) which denied the claimant’s request to exclude certain quarters in her base period and substitute three or more calendar quarters in which the claimant received Workman’s Compensation. After due notice was provided, a telephone hearing was held on December 2, 2015. Ms. Lawshe participated.

ISSUE:

The issue is whether the claimant meets the criteria to exclude certain quarters in the base period and substitute three or more consecutive calendar quarters immediately preceding the base period; prior to receiving Workman’s Compensation benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Vallerie G. Lawshe opened a claim for unemployment insurance benefits with an original claim date of October 11, 2015. The claimant’s base period was determined to be July 1, 2014 through June 30, 2015. The claimant had no wages for employment reported by American Blue Ribbon Holdings LLC during the base period and did not perform service in insured work for any other employers during that period.

Ms. Lawshe was employed as a full-time server for the captioned employer d/b/a Baker’s Square. Ms. Lawshe was paid at the rate of \$4.85 per hour plus gratuities. She began her employment on April 7, 1997. The claimant’s last day of work for the employer was on or about September 22, 2013; when the claimant suffered a Workman’s Compensation injury. Because of her injury, Ms. Lawshe was unable to return to work and subsequently underwent surgery. Ms. Lawshe was terminated from her employment with American Blue Ribbon Holdings LLC by a letter dated December 16, 2013.

For the period of October 1, 2013 through October 1, 2015, Ms. Lawshe received workman’s compensation benefits for temporary disability. On or about October 1, 2015, a decision was

entered by the Workman's Compensation Commission finding that Ms. Lawshe was 50 percent permanently disabled and awarded the claimant a financial amount in a settlement. The disposition of the claimant's Workman's Compensation claim has subsequently been appealed.

Ms. Lawshe testified that as a result of her permanent disability she is unable to work as a server because of permanent limitations on bending, lifting, and raising her arms above shoulder height. Ms. Lawshe further testified that because of her permanent injuries, she is unable to perform any of the normal duties associated with her previous employment with Baker's Square; or similar work. The claimant's intention is to enter into a training program that will increase her other skills and allow her to find employment in a different occupation or field, substantially different from that which she engaged in at the time of injury. It is the claimant's belief that she meets the criteria that would allow substitution of quarters during which she received temporary disability benefits under the Workman's Compensation Act for the quarters in her base period, where her wage credits were insufficient to qualify for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant meets the criteria to substitute quarters when she received Workman's Compensation, under Iowa Code Chapter 85, during a healing period or temporary total disability benefits, and substitute those quarters for quarters in her base period where she did not have sufficient wage credits to qualify for unemployment insurance. She does not.

Iowa Code Section 96.23 provides the statutory authority for the Department to exclude three or more calendar quarters from the individual's base period if the individual received Workman's Compensation benefits for temporary or total disability, or during a healing period for those three or more calendar quarters; if the individual did not receive wages from insured work for three calendar quarters, did not receive wages for insured work for two calendar quarters, and did not receive wages for insured work for another calendar quarter equal to or greater than the amount required for a calendar quarter.

871 IAC 24.7(2) describes one of the specific circumstances that allows the Department to exclude certain quarters in the base period and substitute three or more consecutive calendar quarters immediately preceding the base period prior to Workman's Compensation benefits. The circumstance described in 871 IAC 24.7 required to allow the substitution of quarters as the requirement described in 871 IAC 24.7(2) is that the individual returned to work or became medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury. There being no other information available on the claim, the administrative law judge concludes that the denial was based upon the claimant's inability to return to her previous work and her medical inability to return to employment substantially similar to the employment that she was engaged in at the time of the injury.

Although sympathetic to the claimant's situation, for the above stated reasons the administrative law judge concludes that the claimant's request to substitute base period quarters for quarters during which she received Workman's Compensation benefits during a healing period or temporary total disability period was properly denied. Accordingly, the claimant has insufficient wages for insured work in her base period to establish a valid unemployment insurance claim.

DECISION:

The representative's decision dated November 5, 2015 (reference 01) is affirmed. The claimant did not earn enough wages of insured work in her base period to establish a valid unemployment insurance claim. The claimant is not eligible to substitute calendar quarters preceding the base period prior to the Workman's Compensation benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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