

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TERI J ANDERSON
Claimant

ROCK RAPIDS PIZZA RANCH INC
Employer

APPEAL NO. 20A-UI-07013-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (5/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Teri Anderson filed a timely appeal from the June 20, 2020 reference 02, decision that disqualified her for benefits, based on the deputy's conclusion that Ms. Anderson refused recall to suitable work with Rock Rapids Pizza Ranch on May 1, 2020. After due notice was issued, a hearing was held on August 3, 2020. Ms. Anderson participated. Sean Van Berkum represented the employer and presented additional testimony through Cassandra Van Berkum. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A, and KPYX.

ISSUE:

Whether the claimant refused an offer of suitable work without good cause on or about May 1, 2020.

Whether the claimant has been able to work and available for work since the benefit week that started April 26, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teri Anderson was employed by Rock Rapids Pizza Ranch, Inc. as a full-time Assistant General Manager. Ms. Anderson began the employment in October 2019. Before the COVID-19 pandemic became a factor in the employment, Ms. Anderson usually worked 40 to 45 hours per week. Ms. Anderson could be scheduled to work any day of the week, 10:00 a.m. to 10:00 p.m. Ms. Anderson's hourly wage was \$13.00. Sean Van Berkum, General Manager, and Cassandra Van Berkum, Assistant General Manager, were Ms. Anderson's supervisors.

The employer temporarily laid off Ms. Anderson effective March 20, 2020, in response to a COVID-19 related slowing of business and the Governor's decision to close restaurants for dine-in service. On April 27, 2020, Ms. Van Berkum sent a text message to Ms. Anderson to let her know that the restaurant's dining room would be reopened effective Friday, May 1, 2020 and that the employer was recalling Ms. Anderson to the employment effective May 1, 2020. Ms. Anderson responded to the text message and indicated that she would return to the

employment on May 1, 2020. However, Ms. Anderson subsequently contacted the business owner, Schuyler Notebook, and stated that she would be unable to return to work until Monday, May 4, 2020 because she had some things to finish before she could return to work. Ms. Anderson subsequently contacted Mr. Notebook a second time and stated that she would be unable to return to work until Monday, May 11, 2020 because was helping her father with his farm that week in exchange for payment. Ms. Anderson had been without an income since the layoff and had entered into an agreement with her father whereby she would help him with his farm work for a week and he would provide her with \$1,701.00 for three \$567.00 mortgage payments. The employer had full-time work for Ms. Anderson during the week that ended May 9, 2020.

Ms. Anderson returned to the Pizza Ranch employment on Monday, May 11, 2020, worked until Friday, May 15, 2020, 26.52 hours, and then voluntarily separated from the employment. Ms. Anderson's wages for the week that ended May 16, 2020 were \$344.76. The employer had full-time work for Ms. Anderson during that week that ended May 16, 2020.

Ms. Anderson established an original claim for unemployment insurance benefits that was effective March 15, 2020 in response to the temporary layoff from Pizza Ranch. There are multiple base period employer, including Rock Rapids Pizza Ranch, Inc. Iowa Workforce Development set Ms. Anderson's weekly benefit amount at \$518.00. By the time of the August 3, 2020 appeal hearing, Ms. Anderson had made weekly claims for the 18 consecutive weeks between March 15, 2020 and July 18, 2020. Benefits were withheld until May 18, 2020, while Iowa Workforce Development requested and processed information regarding out of state wages to be included in the Iowa combined wage claim. Beginning on May 18, 2020, IWD paid Ms. Anderson regular benefits for each of the weeks between March 15, 2020 and June 13, 2020. The benefits included \$518.00 in regular benefits for the week that ended May 2, 2020, the week during which Ms. Anderson was supposed to return to the employment, but did not return. The benefits paid to Ms. Anderson included \$518.00 in regular benefits for the week that ended May 9, 2020, during which Ms. Anderson was supposed to be back at work full-time, but was instead assisting her father in exchange for \$1,701.00 on mortgage payments. The benefits paid to Ms. Anderson also included \$302.00 in regular benefits for the week that ended May 16, 2020, during which Ms. Anderson was not available for work with the employer on Sunday that started the week or the Saturday that ended the week. Ms. Anderson reported her \$345.00 (rounded) wages from Pizza Ranch when she made her weekly claim for the week that ended May 16, 2020.

Beginning May 16, 2020, Iowa Workforce Development also paid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for 11 weeks between March 29, 2020 and June 13, 2020. This included \$600.00 in FPUC benefits for the weeks that ended May 2, May 9, and May 16, 2020.

REASONING AND CONCLUSIONS OF LAW:

A claimant who refuses recall to suitable employment without good cause is disqualified for unemployment insurance benefits until the claimant works in and is paid wages for insured work equal to 10 times the claimant's weekly benefit amount. Iowa Code section 96.5(3)(a). The work in question was suitable. The employer was merely recalling Ms. Anderson to the same work under the same conditions that had been in place prior to the temporary layoff.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

In this instance, the offer of recall and then alleged refusal occurred after Ms. Anderson established her claim for benefits and during a period when her claim was active.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

In this instance, there was a bona fide offer of recall through the text message directed to Ms. Anderson on April 27, 2020. However, there was not a *definite* refusal. Instead, there was acceptance of a May 1 return to work date, followed by a deferral to May 4, followed by a deferral to May 11, 2020 and return to the employment on May 11, 2020.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Here we come to the heart of the matter, which is not a work refusal issue but instead a question of whether Ms. Anderson was available for work, beginning with the week of April 26, 2020 through May 2, 2020. A claimant is not eligible for benefits during any claim week during which the claimant fails to demonstrate that the claimant is able to work and available for insured work. Iowa Code section 96.4(3).

Iowa Admin. Code r. 871-24.22(2) provides, in relevant part, as follows:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of

establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

...

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code Section 96.19(38)(c).

An individual shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular hours and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b).

Because Ms. Anderson was attached to the Rock Rapids Pizza Ranch employment and temporarily laid off from that employment, one availability requirement applicable to her was that she be available for work with the employer. While Ms. Anderson appears to have been available as of April 27, when she agreed to return to work on May 1, 2020, she soon thereafter became unavailable for work with her employer, when she elected to enter into the arrangement with her father, rather than be available for work with the employer. The weight of the evidence indicates that Ms. Anderson was not available for work with Pizza Ranch during the majority of the week that ended May 2, 2020. Accordingly, she is not eligible for benefits for that week. Ms. Anderson continued to not be available for work with her employer throughout the week that ended May 9, 2020 and is not eligible for benefits for that week. Ms. Anderson ended up working the majority of the week that ended May 16, 2020. However, she elected not to make herself available for work on Sunday, May 10, 2020. In addition, she elected not to make herself available for work on Saturday, May 16, 2020. While Ms. Anderson met the availability requirement during the week that ended May 16, 2020, her voluntary reduction in work hours prevents her from meeting the definition of being partially unemployed for that week and, therefore, from being eligible for benefits for that week.

Because the evidence establishes a separation from employment that occurred on May 15, 2020, this matter is remanded to the Benefits Bureau for initial adjudication of that set of issues. In connection with that adjudication, the Benefits Bureau should make the initial determination of whether Ms. Anderson was available for work within the meaning of the law during the period beginning May 17, 2020.

DECISION:

The June 20, 2020, reference 02, decision is modified as follows. The claimant was temporarily laid off, but not available for work within the meaning of the law during the week that ended May 2, 2020. The claimant did not provide a definite refusal of recall and not disqualification shall enter based on an alleged refusal of recall on or about May 1, 2020. The claimant was not available for work within the meaning of the law during the week that ended May 9, 2020. The claimant met the availability requirement, but was not partially unemployed during the week that ended May 16, 2020. The claimant is not eligible for benefits for the three-week period of April 26, 2020 through May 16, 2020.

This matter is remanded to Benefits Bureau for initial determination of eligibility issue and the liability issue surrounding the May 15, 2020 separation. The Benefits Bureau should also make an initial determination of whether the claimant was available for work within the meaning of the law during the period that began May 17, 2020.

This matter is also remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular and FPUC benefits the claimant received for the three weeks between April 26, 2020 and May 16, 2020.



James E. Timberland
Administrative Law Judge

September 23, 2020
Decision Dated and Mailed

jet/mh

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits under state law for the three-week period of April 26, 2020 through May 16, 2020. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the regular benefits and FPUC benefits you received.**