

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LILY K DEFOREST COLVIG
Claimant

APPEAL NO. 20A-UI-13892-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CITY COFFEE COMPANY
Employer

OC: 03/22/20
Claimant: Respondent (1)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 28, 2020, reference 01, decision that allowed benefits to the claimant, provided she met all other eligibility requirements, based on the deputy's conclusion that Iowa City Coffee Company did not make an offer of work on May 13, 2020. After due notice was issued, a hearing was held on January 5, 2021. The claimant, Lily Deforest Colvig, participated. Tara Cronbaugh represented the employer. Exhibits 3, 4 and A through E were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO and KPYX.

ISSUE:

Whether the claimant refused an offer of suitable work without good cause on or about May 13, 2020 and/or on or about July 5, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The employer operates multiple coffee shops in the Iowa City area. The claimant began her employment in 2016 and last performed work for the employer on or about March 13, 2020. The claimant was a part-time supervisor. The claimant worked almost exclusively at the employer's shop located within the University of Iowa Memorial Union. The claimant also performed worked at the employer's shop located within the University of Iowa Hospitals and Clinics. Brandon Reimers managed the IMU and Washington Street locations and was the claimant's supervisor. The claimant did not work at any of the employer's Washington street location. The claimant lived within walking distance of the IMU. The claimant's wage was \$11.00 per hour. The claimant generally worked 15 to 20 hours per week. For much of the period of employment, the claimant was a student at the University of Iowa. The claimant graduated in December 2019.

The employer laid off the claimant on or about March 13, 2020. The employer generally closes the IMU location during spring break. However, the claimant's layoff occurred in the context of the

University of Iowa discontinuing in-person classes for the remainder of the semester and closing the IMU in the context of the COVID-19 pandemic.

At the time of the layoff, the claimant shared an apartment in Iowa City. The claimant's lease was set to expire at the end of July 2020. The claimant's family's home is in Des Moines. After being laid off, the claimant returned to her home in Des Moines with the plan to return to Iowa City when the employer recalled her to the employment.

On May 13, 2020, Mr. Reimers sent a broadcast text message to staff indicating the two of the employer's Java House locations would be opening at 50 percent capacity effective May 15, 2020. Mr. Reimers wrote that he needed all employees, recalled or not, to stop by the next day to pick up a memo regarding sanitation and safety. The claimant responded to the broadcast message. The claimant reminded Mr. Reimers that she was in Des Moines. The claimant asked whether Mr. Reimers wanted to email her to the form so she could sign it and email it back or whether she should wait until she was back in Iowa City. Mr. Reimers replied that the claimant could wait until she returned.

On May 27, 2020, Mr. Reimers sent another broadcast text message in which he stated the employer was going to retire the scheduling platform it has used and that employees who were being scheduled would receive an invitation to the new group chat platform. Mr. Reimers added that those who did not receive the invitation were not being scheduled at that point and should apply for unemployment insurance benefits. The claimant did not receive an invitation to the new scheduling/chat platform.

On July 5, 2020, Mr. Reimers sent a text message to the claimant asking, "Any chance you are back in IC and want some hours at the drive thru location in North Liberty???" The claimant had not previously worked at the North Liberty location. The claimant replied, "I'm in Des Moines right now unfortunately, I'm sorry!" Mr. Reimers added that he was "trying to get people from IMU recalled now so you have jobs when school starts. Just know I may have to recall you even if you're not in town which then could terminate employment and unemployment benefits." The claimant replied, "Okay sounds good. I graduated though so when my lease ends at the end of July, I won't have a place to stay in Iowa city and I will be starting grad school in Des Moines in August, just a heads up!" Mr. Reimers replied, "Ohhhhhh" and "That changes everything !!!! Never mind then!!!!" Mr. Reimers did not recall the claimant to the employment and the claimant did not refuse recall to the employment.

The claimant established an original claim for benefits that was effective March 22, 2020. The claimant made weekly claims for each of the weeks between March 22, 2020 and August 29, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)(a) provides as follows:

Causes for disqualification.

An individual shall be disqualified for benefits:

3. *Failure to accept work.* If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The

individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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.

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.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The evidence in the record fails to establish either a bona fide recall to employment or a definite refusal in connection with either the May 13, 2020 contact or the July 5, 2020 contact. In both instances, Mr. Reimers stopped short of actually recalling the claimant to the employment. Because there was no bona fide offer, there could be no refusal of recall. The claimant is eligible for benefits, provided she is otherwise eligible.

DECISION:

The October 28, 2020, reference 01, decision is affirmed. The employer did not recall the claimant to the employment in connection with the contact on May 13, 2020 or July 5, 2020. There was no bona fide recall and no definite refusal of recall. The claimant is eligible for benefits, provided she is otherwise eligible.



James E. Timberland
Administrative Law Judge

January 29, 2021
Decision Dated and Mailed

jet/scn