

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BROOKE R CROMWELL
Claimant

APPEAL NO. 20A-UI-10403-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BILL'S PIZZA AND SMOKEHOUSE LLC
Employer

OC: 03/15/20
Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

Brooke Cromwell filed a timely appeal from the August 21, 2020, reference 01, decision that disqualified her for benefits, based on the deputy's conclusion that Ms. Cromwell refused recall to suitable work on June 3, 2020. After due notice was issued, a hearing was held on October 14, 2020. Ms. Cromwell participated. Bill Versluis represented the employer. Exhibits 1, 2, 3 and A through K were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, KPYX and WAGE-A.

ISSUE:

Whether the claimant refused an offer of suitable work without good cause on or about June 3, 2020.

Whether the claimant was able to work and available for work during the period of May 31, 2020 through the benefit week that ended October 10, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brooke Cromwell was employed by Bill's Pizza and Smokehouse, L.L.C. as a part-time server and bartender. Ms. Cromwell began her employment in 2012 and last preformed work in March 2020. She generally worked 25 to 35 hours per week. Mr. Cromwell primarily worked evenings and weekends.

Ms. Cromwell established an original claim for benefits that was effective March 15, 2020. She established the claim in response to the employer discontinuing dine-in service as directed by the Governor Reynold's March 17, 2020 Public Health Disaster Emergency proclamation.

Ms. Cromwell was in temporary layoff status on May 27, 2020, when the employer contacted her to discuss possibly having her return to the employment on June 3, 2020 for a soft reopening. During the conversation on May 29, 2020, there was a miscommunication and misunderstanding. Ms. Cromwell left the conversation with the understanding that the employer

would contact her on Monday, June 1, 2020 to confirm whether she would be needed on June 3, 2020. The employer left the conversation with the understanding that Ms. Cromwell would be returning to work at 4:00 p.m. on June 3, 2020, unless the employer communicated otherwise. When Ms. Cromwell did not hear from the employer on June 1, 2020, she went camping with her children on June 2, 2020. Her children are 10, 9 and 7 years old. When Ms. Cromwell did not appear for work at 4:00 p.m. on June 3, 2020, the employer contacted her and directed her to report for work. Ms. Cromwell explained that she thought she would hear from the employer on June 1, that she had gone camping with her children a considerable distance away, and that she would be unable to appear in time for the shift. At about 5:00 p.m., the claimant contacted the employer and recorded the conversation. During the conversation the employer took an excessively heavy-handed approach and repeatedly asserted that Ms. Cromwell had voluntarily quit by not appearing for the June 3, 2020 shift. The employer declined to allow the claimant to return to the employment, though Ms. Cromwell desired to return. Based on the employer's clearly announced decision not to allow Ms. Cromwell to return to the employment, neither party had a reason to expect Ms. Cromwell would report for work on June 4, 2020. For that reason, Ms. Cromwell did not in fact report for work with this employer on or after June 4, 2020.

As of June 3, 2020, Ms. Cromwell lost her daycare arrangement and, therefore, was not in a position to return to work. Because Ms. Cromwell generally worked evenings and weekends, she was available to care for her children earlier in the day. Prior to June 3, 2020, Ms. Cromwell's husband worked first shift hours and was available to care for the children in the evening. As of June 3, 2020, Ms. Cromwell's husband was on a rotating shift that made him unavailable to care for the children in the evening. Ms. Cromwell continued to be without adequate child care to free her up to work until mid-September, when her husband returned to working first shift hours.

During this time, Iowa Workforce Development had suspended the work search requirement. IWD re-imposed the work search requirement effective September 6, 2020.

During the weeks that ended September 12 and 19, Ms. Cromwell applied at one restaurant per week and did not otherwise search for work.

On September 20, 2020, Ms. Cromwell commenced new part-time restaurant employment at Leo's that offered at most 8 to 15 hours of work per week. The workplace was only open for business from 4:00 p.m. to 8:00 p.m. The work paid \$4.50 per hour plus tips. During this week that ended September 26, 2020, Ms. Cromwell worked about 12 hours and did not apply anywhere else.

During the weeks that ended October 3 and 10, 2020, Ms. Cromwell worked 12 hours at Leo's and did not apply for other jobs.

REASONING AND CONCLUSIONS OF LAW:

A claimant who refuses recall to suitable work 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. See Iowa Code Section 96.5(3). The claimant must also meet all other eligibility requirements.

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 fails to establish a refusal of recall to suitable work on June 3, 2020. Ms. Cromwell's nonappearance for work on June 3, 2020 was based on a May 29, 2020 miscommunication between her and the employer. At the time the employer contacted Ms. Cromwell on June 3, 2020, she was not in a position to respond to the workplace that evening in light of her parental responsibilities. Rather than work through the issue as the misunderstanding it was, the employer asserted Ms. Cromwell had quit, in other words, that she had refused recall to the employment. Ms. Cromwell had done no such thing and was trying to get the matter worked out. No disqualification will enter based on a purported refusal of recall to suitable work. In light of the employer's statements to Ms. Cromwell on June 3, 2020, the employer had no reasonable basis to expect Ms. Cromwell to appear for additional shifts and Ms. Cromwell had no basis to expect she would be welcomed back to work additional shifts.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. ...

Iowa Admin. Code r. 871-24.22(2) provides:

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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(8) provides:

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

...

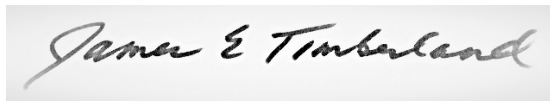
(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

During the week that included June 3, 2020, Ms. Cromwell was no longer available for work within the meaning of the law due to a lack of adequate child care. This continued to be the case through the week that ended September 5, 2020, while her husband continued to work on a rotating shift. Once Ms. Cromwell's childcare issue was resolved, and once IWD re-imposed the work search requirement, Ms. Cromwell began a casual search for new employment, rather than an active and earnest search for work. During the weeks that ended September 12 and 19, she applied for just one job. During the week that ended September 26, 2020, she accepted new employment she knew would provide minimal hours and discontinued her work search. Ms. Cromwell did not meet the availability requirements during the period of May 31, 2020 through the benefit week that ended October 10, 2020 and is not eligible for regular state benefits for that period.

DECISION:

The August 21, 2020, reference 01, decision is modified as follows. The claimant did not refuse recall to suitable work on June 3, 2020. No disqualification shall enter based on the purported work refusal. The claimant did not meet the availability requirements during the period of May 31, 2020 through the benefit week that ended October 10, 2020 and is not eligible for regular state benefits for that period.

This matter is **remanded** to the Benefits Bureau for determination of whether the claimant was available for work during the period beginning October 11, 2020.



James E. Timberland
Administrative Law Judge

December 3, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 may be required to repay the benefits you have received.**