

**State of Wisconsin**



**Labor and Industry Review Commission**

**Lexi L. Schroeder**  
Employee

**BWW Resources LLC**  
Employer

Hearing No. 20601748MW

**Unemployment Insurance  
Decision**

**Dated and Mailed:**

August 21, 2020

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The employee's **request to retract her withdrawal is granted**. The commission **sets aside** the appeal tribunal decision and **remands** this matter to the department for a hearing on the merits of the case.<sup>1</sup>

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

David B. Falstad, Commissioner

/s/

Georgia E. Maxwell, Commissioner

<sup>1</sup> Wis. Stat. §108.09(4)(d) and (e) provides that an appeal tribunal shall review whether the explanation for the failure to appear constitutes good cause.

## **Procedural Posture**

This case is before the commission to consider the employee's request to retract the withdrawal of her hearing request. The commission has considered the employee's petition. Based on its review the commission grants the employee's request to retract the withdrawal.

## **Memorandum Opinion**

On March 30, 2020, the department issued a determination that found that the employee was not available for suitable work because she was attending school but was not in approved training. The employee filed a request for hearing. The employee then withdrew her appeal at her May 11, 2020, hearing. The employee told the ALJ she was going to qualify for the Pandemic Unemployment Assistance (PUA) instead of proceeding with the hearing. She informed the ALJ she had already applied for PUA and expected to be receiving benefits under that program. On May 11, 2020, the department issued an appeal tribunal decision which granted the request to withdraw the employee's appeal. The employee filed a timely petition for commission review requesting that her appeal be reinstated.

The employee states that she was given inconsistent information from department workers. She states she withdrew because she received information from the department that she relied upon to her detriment.

Wisconsin Admin. Code § DWD 140.05 addresses withdrawals of appeals. The rule provides, in relevant part, as follows:

- (2) An appellant may submit a request to retract its withdrawal and reinstate its appeal. The retraction request shall be in writing and state a reason for the request. The administrative law judge may not grant a request to retract a withdrawal unless the request establishes good cause for the retraction and is received within 21 days after the withdrawal decision was mailed to the appellant.

The employee did not direct her retraction request to the ALJ. Instead, she filed a petition with the commission. In reviewing whether a retraction request should be granted, the commission follows the standard set forth in Wis. Admin. Code § DWD 140.05(2).<sup>2</sup>

The employee withdrew her appeal based upon information given to her by the department that she later determined was incorrect. The employee has established good cause for retracting the withdrawal of her appeal.

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<sup>2</sup> *Potts v. Staff On Site of Wisconsin Inc.*, UI Dec. Hearing No. 10006866JV (LIRC May 26, 2011).