

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

MELISSA ROGERS

Claimant

HEARING NUMBER: 21B-DUA-01605

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.6-2, 116-136

DECISION

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Claimant filed a claim for unemployment insurance benefits with an effective date of March 8, 2020. In March 2020, the United States declared a public health emergency based on the COVID-19 pandemic.

Claimant was hired as a Social Worker 2 on November 5, 2007. During her employment claimant was promoted to Social Worker 3. Her duties included conducting child safety interviews in a multiple county are 60-70 miles north of Independence Iowa. Claimant lived 60-70 miles south of Independence Iowa. On September 9, 2019 claimant suffered a non-work related injury. She took 12 weeks of FMLA leave, 8 weeks of additional leave, 14 days due to quarantining and another 14 days waiting for verification from her medical provider of her ability to return to work. Claimant never provided such verification as her doctor would not give approval since claimant had not yet finished physical therapy. The Claimant's was not able to receive physical therapy because this in-person therapy was not available due to the COVID-19 health emergency. The Claimant remained unavailable for work, due to this inability to receive physical therapy, from May 29, 2020 through March 14, 2021.

REASONING AND CONCLUSIONS OF LAW:

The Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, Sec. 2102, in conjunction with the Continued Assistance Act, Public Law No: 116-260, and the American Rescue Plan Act, Public Law No: 117-2, provide for unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020 and ending, in Iowa, on or before June 12, 2021, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19.

The CARES Act provides benefits to persons who are unavailable for work due to certain pandemic related reasons, or who lost work as a direct result of the Pandemic. Such persons may be able to collect PUA during any week this situation persists, going back to February 8, 2020 (for a maximum of 39 weeks). The federal Department of Labor has instructed that **eligible persons would include:**

f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. ...

g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency. ...

UIPL 16-20, Attachment 1.

(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Attachment_1.pdf).

In general, the federal regulations governing Disaster Unemployment Assistance, also apply to PUA cases. The issue in this case is whether the Claimant's loss of work, or withdrawal of offer of work, is the *direct* result of the Pandemic.

People who are not working as a direct result of one of the conditions listed in the CARES Act, are able to collect PUA, even though unavailable for work and thus not able to collect regular state benefits. The Department of Labor instructs:

E 35. Question: An individual is on approved unpaid medical leave from his or her employer and is not eligible for state UC because he or she is not able or available to work. Would the individual qualify for PUA?

Answer: It depends. **If the medical leave is based on one of the COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual may be eligible for PUA benefits.**

If the individual does not satisfy one of the COVID-19 related reasons and is otherwise not able to work or available for work, he or she is not eligible for PUA.

Attachment I to IPL No. 16-20 Change I.

(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1_Attachment_1.pdf)

So even though the Claimant is not eligible for state benefits so long as she is not available for work, this does not prevent her from collecting PUA. The issue, then, is whether the reason she is unavailable is one of the reasons listed in the CARES Act. Section 2102 of that act states:

(a) Definitions. -- In this section:

(3) Covered individual. --The term “covered individual”—

(A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and

(ii) provides self-certification that the individual—

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

Persons unavailable to work for covered reasons may be able to collect PUA during any week this situation persists. The federal Department of Labor has explained:

To be a “covered individual” under PUA, an individual must also self-certify that he or she is otherwise able to work and available for work, as provided under state law, except that the individual is unemployed, partially unemployed, **unable to work or unavailable for work** due to at least one of the following categories described below:...

f. The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. Examples include:

- An individual who has been advised by a qualified medical professional that he or she may be infected with the coronavirus and that he or she therefore should self-quarantine. For example, an individual had direct contact with another person who has tested positive for the coronavirus or been diagnosed with COVID-19 by a qualified medical professional, and is advised by a health care provider to self-quarantine to prevent further possible spread of the virus. Such circumstances would render the individual unable to reach his or her place of employment.
- An individual whose immune system is compromised by virtue of a serious health condition and is therefore advised by a health care provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by the coronavirus.

UIPL 16-20, Attachment 1, p. I-5.

(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Attachment_1.pdf).

These examples are not limited to transportation issues. The Department of Labor does give an example of an “individual who is unable to reach his or her place of employment because doing so would require the violation of a state or municipal order restricting travel...” *Id.* at I-5. But this example is discussed in connection with item “e” which gives PUA benefits if “[t]he individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency...” *Id.* This further bolsters our conclusions that item “ff” is plainly not so limited. If COVID related medical restrictions imposed on you mean that you can’t be available to work you can’t reach work within the meaning of item §2102(a)(3)(A)(ii)(I)(ff). The twist in this case is that the Claimant’s medical condition was not caused by COVID, but restrictions placed on the provision of medical services meant that the limiting effect of the Claimant’s medical condition was prolonged. We think this is sufficient to satisfy the requirement that the Claimant’s unavailability for work be caused by COVID. The Claimant’s unavailability was a direct result of COVID so long as she was unable to receive physical therapy due to COVID restrictions.

Applying the DOL standards, and the plain text of the statute, the Claimant is unavailable due to pandemic related reasons. This unavailability lasted from May 29, 2020 (when she was required to get physical therapy in order to become available to work) until March 14, 2021, when she received that therapy.

DECISION:

The administrative law judge’s decision dated September 16, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant is eligible for Pandemic Unemployment Assistance commencing May 31, 2020 and ending on March 14, 2021. Accordingly, the Claimant is allowed Pandemic Unemployment Assistance benefits for any week the Claimant is otherwise eligible.

The matter is remanded to Iowa Workforce Development for the appropriate calculation of benefits, and any other appropriate determination regarding the Claimant’s eligibility.

James M. Strohmman

Ashley R. Koopmans

DISSENTING OPINION OF MYRON R. LINN:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.