

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

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GARY THOMPSON

Claimant

and

WALMART INC

Employer

HEARING NUMBER: 20BUI-05238

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:** 96.4-3, 24.23-10

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

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 the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

First of all, the able and available requirements are so fundamental to the unemployment system that under section 303(a)(12) of the Social Security Act federal funds will not be released to a state unless that state's law requires that an individual is able to work, available to work, and actively seeking work as a condition of eligibility for regular UC for any week. 42 U.S.C. 503(a)(12) ("A requirement that, as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work.") Even during the Pandemic, the state statute remains unchanged and the federal Department of Labor instructs that states must continue to apply the availability requirements as set forth in their laws, or else run afoul of federal requirements. See UIPL 23-20 (DOLETA 5/11/20) ("EUISSA emergency temporary flexibility provision does not apply to the 'able to work' and 'available to work' provisions of Section 303(a)(12) of the [Social Security Act]."). The requirement is an indispensable and defining part of the unemployment system. Without this requirement the unemployment benefit system becomes a form of disability insurance. The Employment Security system is not designed for this, and the tax-supported fund could not be maintained on that basis.



05238

**However**, we point out to the Claimant that although the Claimant is denied benefits under state unemployment law, **this does not bar receipt of certain special pandemic related benefits**. In fact, being ineligible from state unemployment benefits is a prerequisite to these benefits. Of particular interest to the Claimant is Pandemic Unemployment Assistance [PUA]. That law is a sort of disability benefit, and it provides benefits to persons who are unavailable for work due to certain pandemic related reasons. 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**:

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

It is further our understanding that federal law requires all PUA claims to be backdated to as early as February 8, depending on when the applicant's self-quarantine began. The upshot is that if Claimant can make the necessary PUA showing of a need for self-quarantine Claimant may very well be eligible for PUA for any week such a quarantine was or is in place, and so he has wisely decided to pursue this avenue of federal benefits through Iowa Workforce. **Our ruling today is no bar to PUA.** PUA is not a lesser benefit. It is an alternate benefit designed for people who do in-person work, but whose medical condition is such that they have been advised to self-quarantine.

The databases we have access to show that the Claimant has applied for PUA and that the determination is pending. Since one must be available for work to collect regular benefits, and unavailable for COVID reasons to collect PUA, and since PUA is designated the benefit of last resort regular benefits and PUA are mutually exclusive. These two benefits never overlap. This why the Department of Labor requires that "[i]n processing claims for PUA, states must verify that individuals have no regular UI entitlement [and if] the individual's eligibility for regular UI is questionable ... then the state must first require the individual to file a regular UI initial claim. If the individual is subsequently disqualified, then the state may consider the individual for PUA eligibility." *UIPL 16-20, Attachment 1*, p. I-9. This means that **it is likely that part of the delay in processing the Claimant's pending PUA claim is that Workforce is awaiting the outcome of this appeal.**

Notably today we have made a decision that denies regular unemployment, but allows regular benefits once the Claimant offers to return to work, but is rejected. 871 IAC 24.22(2)(j)(1) ("If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits."). What this means is that if the Claimant can get PUA the Claimant would receive that benefit so long as the Claimant is unavailable because on a leave of absence for COVID reasons, and then receive regular state benefits if Claimant returns and offers services once that COVID leave ends but Claimant is not rehired. Doing things this way would maximize the number of weeks of benefits available to the Claimant while minimizing the charges to the Employer. Meanwhile, the Employer should note it can avoid charges by bringing the Claimant back to work at the end of the COVID leave. Of course, none of this is why we affirm the Administrative Law Judge today. We affirm the Administrative Law Judge because under Iowa's Employment Security Law the Claimant is plainly not able and available for work at this time. Iowa

Code §96.4.

05238

We moreover concur in the Administrative Law Judge's disposition on the overpayment:

[We] will not consider the issue of whether claimant has been overpaid benefits prior to the denial decision being issued, as claimant may be eligible for Pandemic Unemployment Assistance, and in that case, such a decision would be unnecessary. However, the [Board] cautions claimant that if he .... is not approved for PUA, he may be found to have been overpaid benefits and will have to repay those benefits.

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Ashley R. Koopmans

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James M. Strohman

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Myron R. Linn

RRA/fnv