

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

REBECCA K MCTURK

Claimant

and

KWIK TRIP INC

Employer

HEARING NUMBER: 20BUI-02517

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: 96.5-2-A

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. With the following modification, 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** with the following **MODIFICATION**:

The Board modifies the Administrative Law Judge to add the following discussion of credibility.

It is the duty of the Board as the ultimate trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Board, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, as well as the weight to give other evidence, a Board member should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what evidence to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence the Board believes;

whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). The Board also gives weight to the opinion of the Administrative Law Judge concerning credibility and weight of evidence, particularly where the hearing is in-person, although the Board is not bound by that opinion. Iowa Code §17A.10(3); *Iowa State Fairgrounds Security v. Iowa Civil Rights Commission*, 322 N.W.2d 293, 294 (Iowa 1982). The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence considering the applicable factors listed above, and the Board's collective common sense and experience. We have **not** found credible the testimony from the Claimant that she was having a diabetic episode at the time she chose to drink from the smoothie. We conclude from the totality of the evidence submitted at hearing that this is an explanation supplied after the fact and not the true reason for the Claimant's intentional decision and action of drinking the smoothie without paying.

We note for the edification of the parties that "[a] finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States." Iowa Code §96.6(4). This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise. See *also* Iowa Code §96.11(6)(b)(3) ("Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual shall not be used in any action or proceeding, except in a contested case proceeding or judicial review under chapter 17A...).

In addition to this modification we point out to the Claimant that although she is denied benefits under state unemployment law, **this does not bar her from receipt of certain special pandemic related benefits**. In fact, being ineligible from state unemployment benefits is a prerequisite to some of these benefits. Of particular interest to the Claimant is Pandemic Unemployment Assistance. That law provides benefits to persons who are unavailable for work due to certain pandemic related reasons 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).

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. Here, of course, the Claimant was at work as late as February 20. The upshot is that if she can make the necessary PUA showing

of a need for self-quarantine she may

02517

very well be eligible for PUA for any week such a quarantine was or is in place, and so she is well-advised to pursue this avenue of federal benefits through Iowa Workforce. **Our ruling today is no bar to PUA**, but it would mean that once she comes off PUA she would have to requalify by earning 10 times her weekly benefit amount before she could receive state unemployment benefits. Naturally, none of this has had any effect whatsoever on our decision to deny state unemployment benefits.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn

RRA/fnv