

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

KIMBERLY A SCALLON

Claimant

and

KIDQUEST

Employer

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HEARING NUMBER: 21B-UI-04699

**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: 96.5-1

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**.

The Claimant has requested to present new and additional evidence. The grounds are, broadly, that the Claimant was not represented below, the issue of availability was unanticipated, and that the Claimant lost email access at her former employer. These do not justify departure from the usual hearing process in this case.

The Benefits Bureau of Iowa Workforce issued two decisions on September 29, 2020. One disqualified the Claimant for quitting, and one found she was unavailable for work and thus not eligible for benefits. The Claimant appealed both and Workforce received the appeals on October 12, 2020. Two notices of hearing were sent out on two cases setting the hearing on the two issues. One notice referred to quitting as the issue and the other referred to availability. Notices went out November 4. The hearings were set for December 10. So already the Claimant had almost two months from the date of her appeal to the date of the hearing to gather information. The Claimant did not appear at the first hearing and was defaulted. She appealed the

decisions to the Board. The Board found her non-appearance excused and remanded the matters in decisions issued on February 4, 2021. Again, notices of hearing went out setting the hearing for March 19, 2021. So once again the Claimant had an additional six weeks between the Board remand and the March hearing to get her evidence together. All told nearly six months have elapsed since the fact finding decisions disqualifying the Claimant and the hearing in this matter. It is in this context that the Claimant seeks a third chance at a hearing.

We note that claimants are required to certify that they have read the claimant handbook. That handbook includes a section on continued eligibility that explains “[y]ou must be able and available for work while claiming benefits. It is important to notify us of any condition or situation which would prevent you from working, accepting work, or looking for work the majority of the week.” <https://www.iowaworkforcedevelopment.gov/continued-eligibility>. Furthermore, both the decision of the fact finder decision Reference 02 which was reviewed in case 04700 and the notices of hearing issued in that case referred to availability as the issue. The Claimant had notice this would be an issue and under the circumstances not having an attorney is not sufficient to just a third chance to submit the evidence. *See Hedges v. Iowa Dept. Job Service*, 368 N.W.2d 862, 867 (Iowa 1985). Furthermore, most ex-workers who appear before us have lost access to their employer email, and the physical premises too. What those who want to get information do is to either engage in discovery or request a subpoena. The subpoena process is described on the back of the notice of hearing – and Claimant got four of these. When additional time is needed one can request to reschedule the hearing, and this process is likewise described on the back of the four notices. The Claimant’s requests for a new hearing, to submit additional evidence, and for oral argument are denied. *See Hollensbe v. Iowa Dept. of Job Service*, 418 N.W.2d 77, 80 (Iowa App. 1987) (Not good cause because “evidence she now seeks to introduce was available to her prior to the hearing. She failed to request the information through a subpoena or discovery.”)

Now that the Claimant has counsel, they should pay close attention to what we say now. All is not lost. The Claimant may be able to receive the federal benefits known as Pandemic Unemployment Assistance (PUA).

First off being denied benefits under state unemployment law, **does not bar receipt of PUA**. In fact, being ineligible from state unemployment benefits is a prerequisite to this benefit. PUA 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, potentially as far back as February 8, 2020, for most cases. The federal Department of Labor has instructed that a person can get PUA if **“unemployed, partially unemployed, unable to work or unavailable for work due** to at least one of the following:

- a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. ...
- ...
- 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.**

UIPL 16-20, Attachment 1.

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

We note that one will qualify for PUA for *either* (1) being unavailable to work because you have medical proof that you have been told to quarantine and not work at all, *or* (2) having lost your job as a direct result of the Pandemic. Thus it is quite possible that someone who has to quit a job that COVID makes particularly risky for them, but who remains otherwise available to work, may be able to get PUA on the theory that the *job loss* was a direct result of COVID even though the person doesn't have to totally quarantine.

The amount of PUA benefit is *at least* as great of the regular state benefit the Claimant seeks in this case. *Attachment II, UIPL 16-20, Change 1* (DOL-ETA April 27, 2020)

(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1_Attachment_2.pdf). Further, in most cases, federal law requires all PUA claims to be backdated to as early as February 8, 2020 depending on when the applicant's COVID-related unavailability or job loss began. This is a point we want to make specially.

The PUA benefit is the result of *three* laws. First, up is the CARES act which required claims to be filed by December 26, 2020 but could backdate any such claim as far back as February 8, 2020. Then along came the Continued Assistance Act which now extended the PUA benefits to March 13, 2021. Under the Continued Assistance Act a claim filed after December 26, 2020 could not be backdated any earlier than December 1, 2020. And then came the American Rescue Plan Act, which was enacted on March 11, 2021, extends PUA out to September 5, 2021, although all the special federal benefits ended in Iowa on June 12, 2021. While the limitation on backdating of PUA claims technically applies, this is not a problem for this Claimant:

As discussed in Question 4 of Attachment I to UIPL No. 16-20, Change 1, individuals filing for PUA must have their claim backdated to the first week during the Pandemic Assistance Period (PAP) [which commences on February 8, 2020] in which the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Section 201(f) of the Continued Assistance Act provides a limitation on backdating for claims filed after December 27, 2020 (the enactment date of the Continued Assistance Act).

If an individual filed a regular UC claim on or before December 27, 2020, and the state later determines that the individual is not eligible for regular UC, the state should use the date the claimant filed the regular UC claim as the date of filing for the PUA claim, so long as the individual met the requirements for PUA as of that date. For example, if the individual filed a regular UC application on October 4, 2020 and the state determined the claimant was not eligible for regular UC on January 15, 2021, the PUA application will be deemed to have been filed on October 4, 2020 and the PUA claim will be backdated to that date.

[Attachment I to UIPL No. 16-20, Change 4](#), p. I-18 to I-19 (DOL ETA 1/8/21). Additional explanation was more recently provided:

An individual who establishes retroactive initial eligibility for PUA must then be required to complete continued claim forms for each week (including the self-certification declaration that includes the original and expanded list of COVID-19 related reasons) to receive payment. **States must process this additional information and make retroactive payment as appropriate.** This includes paying FPUC at the appropriate amount for any weeks paid during the relevant time Period

[UIPL No. 16-20, Change 5](#), p. 12 (DOL ETA 1/8/21). Since this Claimant filed her regular UI claim in March of 2020, her PUA claim can be backdated to that date. Then she can make weekly certifications as early as February 8, 2020.

Should the Claimant wish to apply for PUA, the information on how to do so is found at:
<https://www.iowaworkforcedevelopment.gov/pua-information>.

Should the Claimant file a PUA claim for 2020, and be denied then she can appeal any adverse decision as needed. Naturally, we are the final administrative authority to hear such appeals.

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RRA/fnv