

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

SAVANNA M WESTERFIELD

Claimant

and

GRAPETREE MEDICAL STAFFING INC

Employer

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HEARING NUMBER: 21B-UI-07846

**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 96.7-2

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 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 adds the following to the Findings of Fact: The Claimant worked full-time for Trinity Medical Center in the fourth quarter of 2020, but lost that job shortly before filing for benefits during the week commencing on January 10, 2021.

The Board modifies the Reasoning and Conclusions of Law by striking the first paragraph on page 4 of the decision, and inserting in lieu thereof the following:

As for the weeks when the Claimant performed work for the Employer this was partial unemployment, but the Claimant continues to be denied for lack of availability. The availability requirement is waived only for certain types of partial unemployment.

In the scheme of the Employment Security Law there are three types of unemployment. There is total unemployment, and there are two types of partial unemployment. For one of the types of partial unemployment, where the worker remains job attached to their regular job, the availability requirement is waived. Also, for total unemployment of limited duration, called "temporary unemployment," the availability requirement is waived if the unemployment is caused by specified reasons.

There are two types of partial unemployment:

37.

...

b. An individual shall be deemed “partially unemployed” in any week in which either of the following apply:

(1) While employed at the individual’s then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual’s weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual’s regular job, earns at odd jobs less than the individual’s weekly benefit amount plus fifteen dollars

Iowa Code §96.1A(37)(b). The first type of partial unemployment is when the claimant remains working for the regular employer but on a schedule reduced from their regular full-time work – in essence a partial layoff. This type of person may collect benefits and is exempt from the job search and availability requirements. Iowa Code §96.4(3)(“This subsection is waived if the individual is deemed partially unemployed, while employed at the individual’s regular job as defined in section 96.1A, subsection 37, paragraph “b”, subparagraph (1)”).

The second type of partial unemployment is basically when a person has lost their job and has only been able to find fill-in work in the interim, or continues working a moonlighting job after loss of the regular job. See 871 IAC 24.1(86). This person must continue to look for full-time work. Odd-job unemployed persons are not exempt from the availability and work search requirements. This is because Iowa Code §96.4(3) only waives for partial unemployment as defined “in section 96.1A, subsection 37, paragraph “b”, subparagraph (1),” and odd-job partial unemployment falls under paragraph 2.

Here the Claimant had lost the regular full-time work at Trinity Medical Center when she was filing for benefits. Any weeks she worked for Grapetree, and experienced a week of partial unemployment, was *odd job* unemployment since she was “separated from the individual’s regular job, earn[ing] at odd jobs” the wages that she reported. She was thus required to be available to work during those weeks, and since we have found she was not available during those weeks she is denied for those weeks. This denial is **not** merely because her job at Grapetree was PRN, but because she lacked a genuine attachment to the labor market.

The upshot of our modification is that the Claimant can become available for work again by getting adequate transportation, and making herself available to suitable employment. She is not required to quit Grapetree in order to become available, which is what the Administrative Law Judge’s decision would have required.

Our denial today does not bar receipt of certain special pandemic related benefits. In fact, being ineligible from state unemployment benefits is a prerequisite to Pandemic Unemployment Assistance [PUA]. That law 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 **eligible persons would include:**

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

- b) A member of the individual's household has been diagnosed with COVID-19. ...
- c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19. ...
- d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work....

UIPL 16-20, Attachment 1.

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

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. The upshot is that if Claimant can make the necessary PUA showing Claimant may very well be eligible for PUA for any qualifying week. **Our ruling today is no bar to PUA.**

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

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/sh