

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

ANTONIO CARRASCO-VIZCARRA

Claimant

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HEARING NUMBER: 20B-DUA-00236

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

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: 116-136

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

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:

The Board adopts the first paragraph of the Administrative Law Judge's findings of fact.

The claimant filed for unemployment insurance benefits with an effective date of April 19, 2020. His weekly benefit amount was determined to be \$545.00.

The Claimant received the following amounts during his leave of absence that lasted from BWE April 25, 2020, through BWE June 27, 2020.

BWE	STD
4/25	\$560
5/02	\$560
5/09	\$280
5/16	\$280
5/23	\$287.8
5/30	\$287.8
6/06	\$287.8
6/13	\$287.8
6/20	\$287.8
6/27	\$287.8

REASONING AND CONCLUSIONS OF LAW

We find that the Claimant has established good cause for not presenting his evidence of disability/sick payments during the hearing, and we do consider the additional evidence submitted. As there is no other party we proceed directly to decision without providing for a rebuttal.

The Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, Sec. 2102 provides for unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020 and ending on or before December 31, 2020, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19.

A person who is monetarily **ineligible** for regular state benefits may still receive PUA, with the benefit amount calculated based on the 2019 calendar year as the base period, although in no event will the weekly benefit amount be below a specified minimum.

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:**

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).

Furthermore, when dealing with sick leave the mere receipt of such payments does not disqualify someone from PUA benefits:

PUA is generally not payable to individuals who have the ability to telework with pay, or who are receiving paid sick leave or other paid leave benefits. **However, an individual receiving paid sick leave or other paid leave benefits for less than his or her customary work week may still be eligible for a reduced PUA WBA.** The state must treat any paid sick leave or paid leave received by

a claimant in accordance with the income restrictions set out in DUA at **20 C.F.R. 625.13**, if the pay or paid leave exceeds the PUA WBA.

UIPL 16-20, Attachment 1, p. I-3.

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

The applicable federal regulations provide:

625.13 Restrictions on entitlement; disqualification.

a) Income reductions. The amount of DUA payable to an individual for a week of unemployment, as computed pursuant to § 625.6, shall be reduced by the amount of any of the following that an individual has received for the week or would receive for the week if the individual filed a claim or application therefor and took all procedural steps necessary under the appropriate law, contract, or policy to receive such payment:

- (1) Any benefits or insurance proceed from any source not defined as “compensation” under § 625.2(d) for loss of wages due to illness or disability;
- (2) A supplemental unemployment benefit pursuant to a collective bargaining agreement.
- (3) Private income protection insurance;

20 CFR 625.13.

Under rule 625.13 the DUA payable “shall be reduced by the amount of” payments made “due to illness or disability.” This is a dollar-for-dollar reduction, and since the Claimant received more than his \$545 WBA in the first two weeks of the leave he is not eligible for PUA for those two weeks. But given our findings of fact, and these provisions we find the Claimant is **eligible for PUA** during the Claimant’s leave for the remaining eight weeks, namely, those beginning with BWE May 9, 2020, through the BWE June 27, 2020. PUA is due in the following amounts:

BWE	Base WBA	STD	PUA Payable
5/09	\$545	\$280	\$265.0
5/16	\$545	\$280	\$265.0
5/23	\$545	\$287.8	\$257.2
5/30	\$545	\$287.8	\$257.2
6/06	\$545	\$287.8	\$257.2
6/13	\$545	\$287.8	\$257.2
6/20	\$545	\$287.8	\$257.2
6/27	\$545	\$287.8	\$257.2
			\$2,073.20

It thus appears the Claimant will be overpaid regular state benefits in the amount of \$1,759.8. It also appears that Iowa Workforce will assess an overpayment of \$1,200 in FPUC as well. Although we can do the calculation we nevertheless will refer the matter to Iowa Workforce to make the official calculations.

Finally the Board Chair and Vice Chair would comment that should the Claimant be assessed an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, **the Claimant may be eligible for a waiver of any FPUC overpayment**. To find out, the Claimant can appeal any FPUC overpayment received from the Iowa Workforce Development, Benefits Bureau, and request a waiver of FPUC.

DECISION:

The administrative law judge's decision dated October 7, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant is eligible for Pandemic Unemployment Assistance for the eight weeks beginning with BWE May 9, 2020, through the BWE June 27, 2020 in the amounts set forth above.

The matter is remanded to Iowa Workforce Development for the appropriate calculation of benefits, any other appropriate determination regarding the Claimant's ongoing eligibility during the weeks we have allowed benefits, and re-calculation of any overpaid benefits.

Ashley Koopmans

James M. Strohman

Myron Linn

RRA/ss