

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

JERYLANN D SANDERS

Claimant

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HEARING NUMBER: 21B-DUA-00684

**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: 96.6-2, 116-136

D E C I S I O N

The Claimant appealed this case to the Employment Appeal Board. Two 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 Claimant worked for Pilot Travel Centers from May 30, 2018, to April 12, 2020, as a full-time guest services lead. She requested and was granted a leave of absence from April 13, 2020, through May 25, 2020. The Claimant needed the leave of absence because the school that two of her children attended was closed, and because she was quarantining over concerns of COVID-19 to her health.

In case 20A-UI-12571 the Administrative Law Judge disqualified Claimant from regular benefits for not being able and available to work from April 12, 2020 through May 28, 2020. The decision in the case remanded on whether the Claimant was disqualified after May 28 either for not being available, or for her separation from employment. That remand has not been decided.

The Claimant became unable and unavailable to work for the weeks commencing on April 12, 2020 and ending on May 30, 2020 because she was required to stay home with her children to assist them with school and/or provide daycare to them after school. For claim weeks after May 30, 2020 the Claimant still has a claim for regular benefits pending, and the issue of whether she will be allowed regular benefits from May 28 forward has not been resolved, even preliminarily, by Iowa Workforce.

REASONING AND CONCLUSIONS OF LAW

Analysis of the Law

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.

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:

To be a “covered individual” under PUA, an individual must also self-certify that he or she is otherwise able to work and available for work, as provided under state law, except that the individual is unemployed, partially unemployed, **unable to work or unavailable for work** due to at least one of the following categories described below:...

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).

Section 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act defines individuals who are eligible for PUA benefits as including an individual who “is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, **or unable or unavailable to work because-** 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...”

The statute and directives specify that one who is “unavailable to work” for one of the listed reasons is able to collect PUA. Applying the DOL standards, and the plain text of the statute, the Claimant was unavailable due to pandemic related reasons.

We find on this record sufficient evidence to allow benefits from the week commencing on April 12, 2020 through the week ending on May 30, 2020.

One twist in our ruling is that the order of collecting benefits is regular base period state unemployment, then PEUC, then extended benefits and then PUA. *E.g. Dept. Of Labor, Unemployment Insurance Program Letter 14-20*, p. 6; *Attachment I, IPL 16-20*, p I-13 (DOL-ETA 4/5/20); [UIPL 9-21](#), (12/30/2020). This means that a claimant is only eligible to collect PUA if she is *ineligible* to collect regular benefits, PEUC, and extended benefits. Whether she will be allowed regular benefits after May 28 2020 is an issue still pending before Iowa Workforce. We therefore do not address whether she will be allowed PUA after that day.

What this means to the Claimant

We have allowed PUA from April 12 through May 30. This is because whether she will get regular benefits after May 30 remains to be resolved by Iowa Workforce. If the Claimant should be denied regular state benefits by a decision of Iowa Workforce Development then she should again apply for PUA. She needs to ask for any week after May 30, 2020 during which she was unavailable, or unemployed, because of her COVID related issues. She may or may not be granted PUA, but she should ask for it.

If the Claimant asks for PUA to cover a period of time following May 30, 2020, **Iowa Workforce must treat that request as a continuation of this one.** We understand that initial PUA claims filed after December 26, 2020 may not be backdated before December 1, 2020. But this would not be a new PUA claim, and Iowa Workforce must treat a PUA request filed after an adverse ruling on regular benefits as an additional claim in the existing PUA series. This is so **even if** IWD issues its decision after March 13, 2021 which is the end date of the PUA benefit. If that should happen, and we hope it does not, then **IWD** must still allow the Claimant to seek PUA back as far as May 30, 2020.

DECISION:

The administrative law judge's decision dated December 8, 2020 is **REVERSED IN PART.** The Employment Appeal Board concludes that the Claimant is eligible for Pandemic Unemployment Assistance commencing on April 12, 2020 and ending on May 30, 2020. For those seven weeks, the Claimant is allowed Pandemic Unemployment Assistance benefits for any week the Claimant is otherwise eligible for those benefits.

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

Ashley R. Koopmans

James M. Strohman

Myron R. Linn