

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

JESSICA L WOECKENER

Claimant

and

WALMART INC

Employer

: **APPEAL NUMBER:** 22B-UI-06983

: **ALJ HEARING NUMBER:** 21A-UI-06983

:

: **EMPLOYMENT APPEAL BOARD**

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DECISION

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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, 24.23-10

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 issue of timeliness was raised on appeal when the Claimant filed her appeal after the deadline to appeal the Administrative Law Judge decision. The reason the appeal was late was that the Claimant had not received the Administrative Law Judge's decision. Based on this circumstance, the Board would find good cause for the untimely appeal, and consider it as timely.

The Board adds to the findings of fact that the Claimant was advised by her health care provider that she was unable to wear a mask or a face covering because she had severe ashtma and would be at risk of asthma attacks and/or bronchial spasms. By the week ending 10/27/2020 the Claimant had reattached to the labor market and was earning wages in a comparable pattern to in her base period.

The Department of Labor provides the following guidance on a state's ability to convert a UI claim to a PUA claim without having the claimant file a new application.

6. Question: Can the state **convert** an ineligible regular UC claim to a PUA claim?

Answer: It depends. **A new application would not be required if the state has gathered sufficient information on the initial application, including a self-certification** from the individual that one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act is applicable.

The base period for computing a PUA WBA is Calendar Year (CY) 2019, which may be different from the regular UC claim, so additional information may be required. Reference section C and Attachment I in UIPL No. 16-20 Change 1 for additional information on calculating the PUA WBA.

UIPL, 16-20, Attachment I, Change 1, p. I-2 (DOL ETA 4/27/2020). Certainly by the time of the Administrative Law Judge hearing in this matter the Claimant had supplied sufficient information in sworn statements to constitute a self-certification that she was not working due to a covered reason, her physical inability to meet mask requirements imposed as a result of COVID-19. For this reason we will now convert the Claimant's regular benefit claim to a PUA claim as allowed by the Department of Labor.

When a claim for PUA is filed after the end of the program special rules apply.

Iowa ended participation in all Pandemic benefits including PUA as of June 12, 2021. <https://governor.iowa.gov/press-release/iowa-to-end-participation-in-federal-unemployment-benefit-programs%C2%A0citing-strong>. PUA is a federal benefit and the federal Department of Labor address the situation where someone files for PUA after the end of the program in a State:

2.Question: May an individual file a new PUA application after the 30-day required period if they filed for regular unemployment compensation (UC) prior to **October 6, 2021**, but the state does not make a determination of ineligibility for regular UC until after October 6,2021?

Answer: Yes. If the individual self-certifies that they were unemployed, partially unemployed, or unable or unavailable to work because of approved COVID-19 related reason(s) for weeks of unemployment ending on or before the date of state termination or program expiration (whichever comes first), they may file a new PUA application after the 30-day required period only if they: (1) **filed a regular UC claim prior to the end of the 30-day required period** for accepting new PUA applications after the date of state termination or program expiration (whichever comes first) **and** (2) **are found ineligible for regular UC (or PEUC or EB) after the end of the 30-day required period**. However, such an individual must file the PUA claim within 21 days of the determination of ineligibility for regular UC. The state must notify affected individuals of this PUA filing deadline, which may be done as part of the notification that their UC (or PEUC or EB) claim was denied or in a separate notification.

UIPL 16-20, Change 6, Attachment 2.

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change-6_Attachment-2.pdf

First of all, the 30 day processing period in Iowa ended thirty days after June 12, 2021. So the period for processing new PUA claims ended on July 12, 2021. The Claimant cannot file a PUA claim any earlier than today, which is well past the 30-day period. The exception to deadline is when a claim for regular benefits is denied *after* July 12, 2021. Here the denial of regular benefits is today, and so we are permitted to convert the claim to a PUA claim even though the PUA benefit has ended. This means the Claimant can have a PUA claim, and the next issue is backdating of that claim.

Since the Claimant filed a regular UI claim on March 22, 2020 and is now found ineligible for that claim in a decision following July 12, 2021 she falls under the federal backdating provisions. [Attachment I to UIPL No. 16-20, Change 4](#), p. I-18 to I-19 (DOL ETA 1/8/21); [UIPL No. 16-20, Change 5](#), p. 12 (DOL ETA 1/8/21).

We are converting the claim to a PUA claim today, which is after July 12, 2021, and so **backdating to March 22, 2020 is to be allowed**. Given this conversion following a denial of regular benefits on a regular benefit claim predating December 27, 2020, the PUA claim “must be backdated to the first week during the Pandemic Assistance Period that 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.” *Attachment III to UIPL No. 16-20 Change 4*, p. III-1 (DOL ETA 1/8/2021). This means that the periods when the Claimant would have been working but for the COVID mask requirements she could not meet, will be within the Pandemic Assistance Period and may be compensable for PUA benefits, if the Claimant is otherwise eligible for those benefits.

Merits of PUA Claim: The Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, Sec. 2102, in conjunction with the Continued Assistance Act, Public Law No: 116-260, and the American Rescue Plan Act, Public Law No: 117-2, provide for unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020 and ending, in Iowa, on or before June 12, 2021, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19.

The federal Department of Labor has instructed that **eligible persons would include:**

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.

....

The individual has to quit his or her job as a direct result of COVID-19.

UIPL 16-20, Attachment 1, p. I-4

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

Given our findings of fact, and these provisions we find the Claimant is **eligible for PUA** during any time she was unavailable to work based on his physician’s advice that she could not meet the Employer’s masking requirements because of her asthma. Based on the current state of the record benefits are allowed from March 22, 2020 until October 17, 2020.

Based on our ruling in this case, the Claimant should receive some PUA payments. The Claimant will continue to owe the \$12,748.81 in regular benefits, as this overpayment cannot be waived under state law. Normally IWD will use half of the PUA benefits we have allowed to offset as much of the \$12,748.81, as half the PUA will cover. Then IWD will pay the Claimant any remainder of PUA that might be left over. The Claimant may want to use such a remainder of our PUA award to pay down any remaining regular benefit overpayment. Our unofficial calculations are that Claimant should be eligible for around \$14,820 in PUA, but some of this may be used to offset the benefit overpayments. The Board has today waived the Claimant's FPUC, PEUC, and LWAP overpayments, on the condition that she is not paid a second round of those benefits and that she does not receive PUA and PEUC covering the same weeks.

DECISION:

The administrative law judge's decision dated May 24, 2021 is **AFFIRMED ON THE ISSUE OF REGULAR BENEFIT DENIAL.**

PUA BENEFITS ARE ALLOWED. The Employment Appeal Board concludes that the Claimant is eligible for Pandemic Unemployment Assistance and these are allowed from March 22, 2020 until October 17, 2020.

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

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv