

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

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<b>CASSIE L HERMSEN</b>	:	
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Claimant	:	<b>HEARING NUMBER: 20B-UI-04316</b>
	:	
and	:	
	:	<b>EMPLOYMENT APPEAL BOARD</b>
<b>TARGET CORPORATION</b>	:	<b>DECISION</b>
	:	
Employer	:	

**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 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** on the issue of availability to work, but still **DENIES REGULAR BENEFITS** because the Claimant left work but not for good cause attributable to the Employer, as set forth below.

**FINDINGS OF FACT:**

Cassie Hermsen (Claimant) worked for Target Corporation (Employer) employer as a part-time beauty team member. Claimant's first day of employment was May 15, 2019. The last day claimant worked on the job was August 14, 2019.

Claimant left employment with the Employer on August 14, 2019 in order to attend school. The Claimant remained eligible to return to employment with Target. It was anticipated by both parties that the Claimant would return to work at the end of the school year, around May 20, 2020.

During the school year the Claimant was worked part-time for other employers. She was subsequently laid off from those positions due to the pandemic.

Claimant has since secured other employment as of May 11, 2020. Claimant notified Employer on May 20, 2020 that she had secured other employment and did not intend to return to work at Target.

**REASONING AND CONCLUSIONS OF LAW:**

*No Disqualification For Leave of Absence*

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

The individual is able to work, is available for work, and is earnestly and actively seeking work. . . .

871 IAC 24.22 expounds on this:

871—24.22 Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

...

On availability the regulations provide:

24.22(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the **type of services which an individual is offering is generally performed in the geographical area in which the individual is offering** the services.

a. Shift restriction. The individual does not have to be available for a particular shift. **If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.**

...

f. Part-time worker, student—other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if **an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.**

871 IAC 24.22(2).

Now it is true that a “leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.” 871 IAC 24.22(2)(j). But this is clearly directed towards a worker who is job-attached with her regular employer but who needs an unpaid suspension of employment, during which time the worker is not working. Typically, the worker is injured or has family obligations that prevent working on the same basis as usual. But a part-time worker who works seasonally between two employers is not on a leave of absence from the summer employer while she works for the school year employer. She has “left work” for school. She has not sought to permanently separate, but rather to leave work temporarily and return on an anticipated date. But in the interim she is not job attached, and is not on a leave of absence. Were it otherwise we’d have to rule that she is on a leave from the school year employers over the summer, and from the summer employers over the school-year and thus would not be available to work even though she’s working all year long.

Quitting is not the only form of leaving work. The statute does not use the word “quit.” The statute refers to having “left work.” The structure of the actual statute makes clear that the concept of a permanent quit is included within the concept of “leaving work,” but it does not exhaust the forms of “leaving work.” When we look to the other paragraphs found in §96.5(1) it is clear that the Code considers a request for a temporary or indefinite leaving of work is a leaving of work, not a leave of absence. Paragraphs (c) through (f) impose similar conditions for such a person to collect benefits. They all agree: the temporary leaving is a voluntary leaving of work (else why have conditions for requalification?), the worker is thus disqualified, the worker remains disqualified while not job attached, and the worker can lift the disqualification by returning to work and offering services. Workers in these categories of voluntary leaving can requalify by returning to offer services and do not have to earn ten times their weekly benefit amount to requalify. Iowa Code §§96.5(1)(c)-(f); *see also Gilmore v. EAB*, No. 03-2099 (Iowa App. 11/15/2004).

Thus, what happened here does not fall under the leave of absence rule. Afterall, the Claimant worked during the school year on a part-time basis comparable to her work at Target. We simply cannot rule that a worker who is *actually working* on the same basis as in the base period, is on a leave of absence and not available to work on the same basis as during the base period.

We thus reverse the ruling that the Claimant is not able and available for work from August 14, 2019 through May 20, 2020. This does not result in payment of regular benefits.

#### *Disqualification For Leaving of Work*

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits...[i]f the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Furthermore, Iowa Administrative Code 871—24.25 provides:

871—24.25(96) Voluntary quit without good cause. ...The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

...

24.25(26) The claimant left to go to school.

In this case the Claimant left Target to go to school. She anticipated that this leaving would be temporary. As we set out above, this does not negate the fact that it is still a leaving of work. Since it was for good cause which was **not** attributable to the Employer then the Claimant is disqualified from benefits until she has worked in and been paid wages in insured work in the amount of \$2,110.00 following August 15, 2019. We note that it does not appear that the Claimant earned this much prior to May 20, 2020, but that she has done so by July of 2020. The upshot appears to be that she is still disqualified for the weeks she filed for benefits, and that she thus is still overpaid the regular and FPUC benefits she collected. However, our ruling does make a difference to both parties, and we explain this below.

*Pandemic Unemployment Assistance*

PUA is a benefit payable to people for various COVID related reasons. One of these is that the individual is unable to reach their place of employment because the business is shut down as a direct result of COVID-19. According to the operating instructions issued by the Federal Department of Labor:

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

....

j) The individual’s place of employment is closed as a direct result of the COVID-19 public health emergency. For example:

If a business is shut down due to an emergency declaration or due to necessary social distancing protocols, the unemployment of individuals who worked in the business would be considered a direct result of COVID-19.

*UIPL 16-20, Attachment I* (DOLETA 4/20/2020). The Department of Labor deals with the issue of a student who cannot work her part-time school-year job:

28. Question: A full-time student who works part-time may be excluded from DUA because he or she has not lost their “principal source of income” as described under 20 C.F.R. §625.2(s). Is he or she eligible for PUA?

Answer: Yes. Provided a full-time student who worked part-time is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons in section 2102(a)(3)(A)(ii)(I) of the CARES Act, then he or she may be eligible for PUA.

The requirement that the employment be the “principal source of income” under DUA does not apply to eligibility for PUA.

*UIPL 16-20, Change 1, Attachment 1, p. I-7 question 28 (DOL ETA 4/27/2020).*

Again, the issue is not before us, but the information submitted by the Claimant seems to go a long way to establishing PUA eligibility. We note that the weekly amount of PUA is set to the weekly amount of the regular benefits, and that FPUC is payable on PUA over the same period of time that it was payable on regular benefits. Furthermore, we note that being disqualified for regular benefits because of a quit would not bar collection of PUA, **but** being found not available to work for non-COVID reasons (being on a school-year leave of absence) would bar collection of PUA.

We thus give this very important information to the Claimant:

**THE CLAIMANT SHOULD APPLY FOR PANDEMIC UNEMPLOYMENT ASSISTANCE AS SOON AS POSSIBLE.**

**To do so the Claimant should Visit:**

<https://www.iowaworkforcedevelopment.gov/pua-information>

We make this statement because the databases we can access do not show that the Claimant has yet applied for this benefit. PUA is not a lesser benefit. It is an alternate benefit designed for people who do hands-on work, but whose employer was shut down for pandemic-related reasons. This includes students who cannot work their part-time jobs due to the pandemic.

Unfortunately, although Pandemic Unemployment Assistance [PUA] is a federal benefit that is administered through the state of Iowa, our understanding is that according to Iowa Workforce “PUA benefits for those that have a separation issue on their claim has not been implemented in Iowa.”

This is an administrative issue. *UIPL 16-20, Change 1, Attachment 1, p. I-7 question 33 (DOL ETA 4/27/2020)* (“Question: If an individual is disqualified for regular UC because of a job separation that occurred prior to the individual’s unemployment due to COVID-19, is he or she potentially eligible for PUA? Answer: Yes. If the individual is disqualified from regular UC for a cause that occurred prior to the individual’s COVID-19 related reason, he or she may be eligible for PUA.”). In other words, the benefit will be available at some point, but Workforce has to get the systems in place first. Workforce reports that people should continue to check the above website to see when the benefit is available.

The Claimant should monitor the above website to see when the PUA benefit is available for those currently ineligible due to a separation issue (like quitting). She should then apply for this benefit when it becomes available. When Iowa Workforce does get this benefit system running if the Claimant applies for and receives PUA, she will be allowed to receive back payments. *UIPL 16-20, Attachment 1, Change 1, p. I-2 (DOL ETA 4/27/2020)*. We understand the delay is trying, but this is how things stand at this point.

We now take the time to explain how PUA would work in this case. We note that this discussion is for information purposes and none of this influenced our decision today on the separation from employment.

*Summary Of Effect Of Our Decision*

Since we denied benefits based on quitting, the Claimant is denied **regular** benefits until she requalifies by earning covered wages in the amount of \$2,110.00 following August 15, 2019. We note, again, that she seems to have done so as of July, 2020 but she had not done so as of May 20. This means the \$1,266 in **regular** benefits she collected between March 22 and May 2 is still overpaid, and the \$3,000 she collected in FPUC during five of those weeks is still overpaid. Going forward, assuming the Claimant has requalified as it appears, she will not be denied regular benefits as a result of the quit. Any benefits collected after requalification, however, will not be charged to Target.

If the Claimant applies for and receives PUA, she will be allowed to backdate her claim. “**An individual does not need to demonstrate good cause to backdate a PUA claim.** Rather, the claim must be backdated to the first week during the Pandemic Assistance Period [starting on 2/2/2020] that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason...” *UIPL 16-20, Attachment I, Change 1* (DOLETA 4/27/2020)(emphasis added). Since the weekly PUA is set to the same amount as the regular UI, the Claimant could receive the same weekly benefit for the same six weeks she received regular benefits, and the same FPUC would still be payable on five of those weeks. PUA is the benefit of last resort, meaning that for any week that the Claimant is able to collect regular benefits she is *not* able to collect PUA. The two benefit periods thus would never overlap.

This all means that **if** the Claimant applies for **and** receives PUA this is what seems likely:

She will be eligible for PUA and FPUC over the same period, and in the same amounts, that she had received regular benefits and FPUC. The money will not actually be paid but will be recovered as an overpayment, thus negating her overpayments. The weeks paid out to her in regular benefits, moreover, will be added back on her eligibility for regular benefits. Should she become unemployed before March 2021 she could then go back on regular benefits, assuming she is otherwise eligible, but Target would not be charged for those regular benefits. Should she in 2020 become eligible for more PUA going forward, but be ineligible for regular benefits because of COVID-related reasons, she could go back on PUA. But Target would not be charged for PUA either.

Had we affirmed the ruling that the Claimant is not available for work because she is on a school-year leave of absence then she would not be able to collect PUA during March, April and May because she would not be able to certify that she was otherwise able to work and available for work, as provided under state law. Further, had we found her not available for work then any regular benefits paid going forward *would* have been chargeable to Target.

We do not rule on any of this at this point because the Claimant has not applied for PUA from what we can see. We explain all this so the Claimant will understand the importance, and utility, of PUA to someone in her circumstances. Meanwhile, Target should note that as a result of today’s ruling it will be charged neither for regular nor pandemic benefits.

**DECISION:**

The administrative law judge’s decision dated June 15, 2020 is **REVERSED ON THE ISSUE OF THE DISQUALIFICATION FOR NOT BEING AVAILABLE FOR WORK.** The Employment Appeal Board

concludes that the claimant left employment and was not merely on an agreed-to leave of absence. For this reason, **BENEFITS ARE DENIED UNTIL THE CLAIMANT HAS WORKED IN AND IS PAID WAGES IN INSURED WORK EQUAL TO TEN TIMES HER WEEKLY BENEFIT AMOUNT.** Accordingly, the Claimant is denied **regular state** benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible.

The **OVERPAYMENT REMAINS IN EFFECT.** But if the Claimant applies for and receives PUA this should nullify both overpayments.

We **REFER THIS MATTER** to Iowa Workforce, Benefits Bureau to modify the nature of the regular benefits claim lock. The claim should remain locked, but as a voluntary quit not for unavailability. Thus, if Claimant applies for PUA her loss of work at Target would not bar her from certifying that between March 22 and May 20 she was available for work under state law.

The Claimant should in the interim apply for Pandemic Unemployment Assistance. Again, information on how to do so is found at:

<https://www.iowaworkforcedevelopment.gov/pua-information>

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Ashley R. Koopmans

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James M. Strohman

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Myron R. Linn

RRA/fnv