

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

SELAM F MOBATSION

Claimant

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HEARING NUMBER: 20B-DUA-00296

**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: 96.6-2, 116-136

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

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 Administrative Law Judge's Findings of Fact are adopted by the Board as its own.

The Claimant became unable and unavailable to work as of mid-March 2020 because she was required to stay home with her two children to assist them with school and/or provide daycare to children not of school age. This continued at least through the benefit week ending August 29, when school started in the fall.

REASONING AND CONCLUSIONS OF 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...”

Clearly, people who loses work as a direct result of one of the listed conditions are able to collect PUA. But just as clearly these are not the only people who can get PUA. The statute and directives specify that one who is “unavailable to work” for one of the listed reasons is *also* able to collect PUA. The use of the disjunctive “or” makes plain that one need not be both unemployed for one of those reasons and *also* unavailable for one of those reasons. One **or** the other will suffice. The Department of Labor has made this plain in no uncertain terms:

E. Eligibility – Not Eligible for Regular UC

30. Question: An individual is not eligible for regular UC because he or she has not earned requalifying wages since the prior UC claim (double dip provision). Is he or she eligible for PUA?

Answer: Yes. Provided the individual is unemployed, partially unemployed, or unable or unavailable to work because of at least one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act, then the individual may be eligible for PUA.

31. Question: **An individual is disqualified on a claim filed prior to March 2020 and must earn requalifying wages before he or she can be considered eligible for regular UC.** However, due to COVID-19, he or she has not had the opportunity to earn sufficient wages to be eligible for regular UC. Can this individual be eligible for PUA?

Answer: **Yes. Provided** the individual is unemployed, partially unemployed, or **unable or unavailable to work because of at least one of the COVID-19 related reasons** listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act, then the individual may be eligible for PUA.

32. Question: If the individual is disqualified on the regular UC claim and collects PUA, must the individual stop collecting PUA and begin collecting on the regular UC claim once the disqualification period for regular UC is satisfied?

Answer: Yes. Once the individual has served the weeks of the disqualification period, the state must revert the individual back to his or her regular UC claim if there are remaining benefits to be received, provided all other eligibility requirements are met.

33. 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.** This includes an individual who has a prior fraud disqualification.

PUA is a benefit of last resort for anyone who does not qualify for other UC programs and who would be able and available to work but for one or more of the COVID-19 related reasons listed in section 2102 of the CARES Act.

Attachment I to UIPL No. 16-20 Change I.

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1_Attachment_1.pdf

While questions 31 and 33 seems to leave no doubt that a UI-disqualified worker can collect PUA, the answer to question 30 is also important. The Pandemic has not yet reached a year old – it seems like it has been around a lot longer, but it hasn't. This means that any benefit year that ended in 2020 necessarily started before the Pandemic reached our shores. If a person who lost a job back in 2019, and who has not reattached to the labor market by earning requalifying earnings, files for PUA benefits in 2020 that person obviously did not *become* unemployed due to the pandemic. They lost work a long time before, and hadn't reattached since. And yet question 30 allows PUA if the person remains unavailable due to Pandemic reasons.

Applying the DOL standards, and the plain text of the statute, the Claimant did not lose work due to pandemic reasons, but she is unavailable due to pandemic related reasons. This unavailability is from the week commencing February 8, 2020 and for any week during which either the Claimant's schools were not supplying in-person instruction for her children or day cares were closed as a direct result of the pandemic. We find on this record sufficient evidence to allow benefits from BWE March 21, 2020 through BWE August 29, 2020. If conditions are such that the Claimant is not available to work, due to school closures, after BWE August 29 she should contact Iowa Workforce with the necessary information.

DECISION:

The administrative law judge's decision dated October 16, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant is eligible for Pandemic Unemployment Assistance commencing on March 15, 2020 and ending on August 29, 2020. For those weeks, the Claimant is allowed Pandemic Unemployment Assistance benefits for any week the Claimant is otherwise eligible for those benefits. If conditions are such that the Claimant is not available to work, due to school closures or other COVID related reasons, after BWE August 29 she should contact Iowa Workforce with the necessary information.

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

RRA/fnv