

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

RICHARD A COMRIED

Claimant

and

MENARD INC

Employer

:
:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 20B-UI-10531

**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: 96.4-3, 96.19-38B

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**:

In addition to the leave of absence regulation cited by the Administrative Law Judge we also rely on rule 24.23(1) which finds unavailable "An individual who is ill and presently not able to perform work due to illness." We note that the Administrative Law Judge cited rule 24.23(35) which finds unavailable a "claimant [who] is not able to work and is under the care of a medical practitioner and has not been released as being able to work." Under either of these regulations, agreed leave or no, the Claimant is not able and available for work. Unemployment is not a form of government paid sick leave. This is why there is an availability requirement in the first place. The able and available requirement is an indispensable and defining part of the unemployment system. Without this requirement the unemployment benefit system becomes a form of disability insurance. The Employment Security system is not designed for this, and the tax-supported fund could not be maintained on that basis.

But Pandemic Unemployment Assistance *is* a form of government paid sick leave for those who are off work for specified Pandemic related reasons. The databases we have access to, show that the Claimant has applied for PUA and that he has been approved for those benefits effective March 22. The Claimant argues to us that he should get both. This is not how it works. The fact is if we ruled that he should get regular benefits this would result in him being *denied* Pandemic Unemployment Assistance. The two are mutually exclusive.

These two benefits never overlap. This why the Department of Labor requires that “[i]n processing claims for PUA, states must verify that individuals have no regular UI entitlement [and if] the individual’s eligibility for regular UI is questionable ... then the state must first require the individual to file a regular UI initial claim. If the individual is subsequently disqualified, then the state may consider the individual for PUA eligibility.” UIPL 16-20, Attachment 1, p. I-9. The PUA statute specifically states that the very first requirement for getting PUA is that the person “is not eligible for regular compensation.” CARES Act Section 2102(a)(3)(A)(i). Again, if we found that the Claimant *was* eligible for regular compensation this would mean he did not satisfy this very first requirement for PUA, and he would be denied PUA for any week he got regular unemployment. Of course, they are the same amount of money so it doesn’t much matter to the Claimant which benefit he gets at this point. But the law is very clear: You can’t get both at the same time.

But for weeks the Claimant is available again if he should be unemployed he may be able to get regular benefits, *if* he is otherwise eligible. He isn’t stuck forever with one benefit or the other. If you are laid off, but available, you may get regular unemployment while this goes on. If you get sick from COVID and become unavailable for a month you can’t get regular unemployment for that month, even though still laid off, but you could get PUA. If you get better, become available for work again, but are still on layoff, once again you can go back on regular benefits if otherwise eligible. So ideally one can switch back and forth as needed. In other words, you can get both benefits sequentially, but you can’t get both benefits *at the same time*.

Our ruling today is limited only to the period the Claimant was unable or unavailable for work, and does not deny him benefits for any period during which he was able and available for work. Since the Claimant returned to work on May 1 our decision today would not deny him benefits for any period after that date *if* he is otherwise eligible for regular state benefits.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn