

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

TYLER RUSSO

Claimant

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HEARING NUMBER: 20B-DUA-00558

**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: 116-136

D E C I S I O N

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 THE CLAIMANT'S FAVOR**:

The Administrative Law Judge's findings of fact are adopted by the Board as its own.

The Administrative Law Judge's Reasoning and Conclusions of Law are adopted by the Board as its own with the exception of the last two sentences. In place of these sentences the Board makes the following additional analysis.

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 2, 2020 (for a maximum of 39 weeks).

Now under the CARES Act one must be otherwise available to collect PUA, meaning that since full-time students are not generally *otherwise* available for work and they may not be eligible for PUA benefits. But even the regulation states "Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment **except** if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law." 871

IAC 24.23(5) (emphasis added). The Iowa Courts have described this as a rebuttable presumption of unavailability. *E.g. Davoren v. IESC*, 277 N.W.2d 602, 603 (Iowa 1979); *Savage v. IDJS*, 361 NW 2d 329 (Iowa App. 1984). Here the evidence is that the Claimant is capable of attending classes full-time and yet perform his videographer work on the same basis as he had before. If he is unable to find work as a videographer following his return from Florida, and this lack of work is a result of the Pandemic (as it was in the Spring) then being a full-time student is not a bar to PUA. The Department of Labor confirms this:

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.

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

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

We thus allow PUA benefits for any period following his return to Iowa to attend classes in August of 2020, if during that period of time the Claimant experienced a significant diminution of demand for services due to the Pandemic. Pandemic benefits should not be paid for those periods when the Claimant did have sufficient work.

Just as the Administrative Law Judge, we do not approve benefits over the summer because the Claimant was working to an extent that means he was not unemployed as a direct result of the Pandemic.

DECISION:

The administrative law judge’s decision dated October 8, 2020 is **AFFIRMED AS MODIFIED IN THE CLAIMANT’S FAVOR**. The Employment Appeal Board concludes that the Claimant is eligible for Pandemic Unemployment Assistance for those weeks approved by the Administrative Law Judge, and for those weeks since his return to school in August of 2020, during which Claimant has experienced a significant diminution of demand for services as detailed in the findings of fact.

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