

**BEFORE THE
EMPLOYMENT APPEAL BOARD
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
eab.iowa.gov**

SUSAN K ANDERSEN

Claimant	:	APPEAL NUMBER: 24B-DUA-00009
	:	ALJ HEARING NUMBER: 24A-DUA-00009
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
IOWA WORKFORCE DEVELOPMENT DEPT	:	
	:	
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: 116-136

DECISION

The Agency 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** as set forth below.

FINDINGS OF FACT: From May 24, 2020 through February 6, 2021 the Claimant was eligible for either regular benefits or PEUC. The only weeks she would be not be paid benefits would be those when she equaled or exceeded in earnings her benefit amount plus fifteen dollars. Otherwise no employer ever protested the allowance of benefits, and there is no IWD decision disqualifying the Claimant from regular benefits.

The Board adopts the chart found at the bottom of page 3 and top of page 4 of the Administrative Law Judge's decision as correctly reflecting the wages earned by Claimant over the indicated weeks.

REASONING AND CONCLUSIONS OF LAW:

Legal Basics: PUA

The *Coronavirus Aid, Relief, and Economic Security Act*, Public Law 116-136, Sec. 2102 (CARES Act), in conjunction with the *Continued Assistance Act*, Public Law No: 116-260 (CAA), and the *American Rescue Plan Act*, Public Law No: 117-2 (ARPA), provide for unemployment disaster benefits 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.

PUA and Regular/PEUC Are Mutually Exclusive

The PUA disaster assistance benefit is not payable for any week during which a claimant is eligible for regular benefits. This is what Administrative Law Judge Nelson found in this case:

The CARES Act was established to provide PUA benefits to qualified individuals who were not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation.

Decision of Administrative Law Judge, p. 3. The Claimant has not appealed this decision. In addition, this aspect of the Administrative Law Judge's decision is exactly correct. The statute:

(3) Covered individual.--The term "covered individual" (A) means an individual who—

(i) **is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation** under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; **and**

(ii) provides self-certification that the individual—

(I) 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--

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(dd) 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;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(ff) 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;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section

CARES Act, Section 2102(a)(3)(A). The definition of covered individual also has, in (ii)(II) coverage for self-employed individuals, although this is not such a case. But no matter what a claimant argues would meet the part (ii) qualification criteria, the requirement in part (i) cannot be overlooked. That provision, **again**, says that to be covered an individual must be “not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107” followed by “and.” The word “and” is a conjunction and indicates that the following clause is also a requirement. Because of the “and,” the requirement of not being eligible for regular benefits, extended benefits, or PEUC applies to all those who seek PUA benefits, regardless of the grounds enumerated later. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* Canon 12 (2012) (“Conjunctive/Disjunctive Canon”). In particular, the drafters of the CARES act “through abundant caution, put a conjunction between all the enumerated items.” *Id.* This drafting technique is known as *polysyndeton*, which makes explicit that the list elements joined by the “and” must all be satisfied.

Since PUA is a federal benefit, the administrating state agencies follow the federal guidance. *See* Cares Act, §2116 (“the Secretary of Labor may issue any operating instructions or other guidance necessary to carry out the provisions of, or the amendments made by, this subtitle.”). The federal guidance is replete with references to the idea that one cannot get both PUA and regular benefits/PEUC:

PUA provides benefits to covered individuals, who are those individuals **not eligible for regular unemployment compensation or extended benefits under state or Federal law or pandemic emergency unemployment compensation (PEUC)**, including those who have exhausted all rights to such benefits

UIPL 16-20, p. 2 (DOL ETA 4/5/20).

The PUA program generally allows states that enter into an agreement with the Secretary of Labor to pay up to 39 weeks of benefits to individuals **who are not eligible to receive or who have exhausted** regular unemployment compensation (UC), Extended Benefits (EB), and Pandemic Emergency Unemployment Compensation (PEUC) under Section 2107

UIPL 16-20, Attachment 1, p. I-1 (DOL ETA 4/5/20).

“Covered Individual” means an individual who is **not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation** under section 2107 of the Act, including an individual who has exhausted all rights to

regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107

UIPL 16-20, Attachment 1, p. I-2 (DOL ETA 4/5/20).

In processing claims for PUA, **states must verify that individuals have no regular UI entitlement.** If the individual is not eligible for regular UI because there are insufficient covered wages or the individual has an active UI claim with a definite or indefinite disqualification, then a state does not need to require the individual to file a regular UI initial claim. However, the state must have an established process whereby the individual's **ineligibility for regular UI** is documented on the application.

UIPL 16-20, Attachment 1, p. I-9 (DOL ETA 4/5/20).

If an individual is eligible for UC, such individual is not eligible for PUA and should not be counted in any PUA Activities report.

UIPL 16-20, Attachment VI, p. VI-6 (DOL ETA 4/5/20).

Question: Is self-attestation sufficient to determine that an individual is not eligible for regular UC, EB, or PEUC? If not, what other steps must the state take to ensure an individual is ineligible for regular UC, EB, or PEUC?

Answer: **Self-attestation is not sufficient to demonstrate ineligibility for regular UC, EB, or PEUC.** The state may add a notation to the case file without requiring an application for regular UC if the individual has insufficient covered wages to meet the monetary requirements or if the individual has an active UC claim with a disqualification. I-7 States must also determine whether the individual is eligible for regular UC in another state.

If the individual's eligibility for regular UC is questionable (for example, there are wages in the base period but no claim is filed, or a job separation that has not been adjudicated), then the state must first require the individual to file a regular UC claim. **If the individual is subsequently disqualified from receiving regular UC,** the state then must consider the individual for PUA eligibility.

UIPL 16-20, Change 1, Attachment I, p. I-6 to I-7 (DOL ETA 4/27/20).

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.

UIPL 16-20, Change 1, Attachment I, p. I-8 (DOL ETA 4/27/20).

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.

UIPL 16-20, Change 1, Attachment I, p. I-8 (DOL ETA 4/27/20).

Question: An individual is **eligible for regular UC but not collecting payments due to a 100 percent offset. Is he or she eligible for PUA?**

Answer: **No.** In this scenario, the individual is eligible to collect regular UC and is deemed to be receiving payments even when they are used to reduce an existing overpayment. **Therefore, he or she is eligible for regular UC and, thus, cannot be eligible for PUA.**

UIPL 16-20, Change 1, Attachment I, p. I-9 (DOL ETA 4/27/20).

Is an individual eligible for PUA when the state law provides that an individual is eligible for regular UC, but must serve penalty weeks before receiving regular UC?

Answer: **No.** Where state law says that the individual is eligible for regular UC, but not paid until the penalty weeks are served, the individual does not meet the **eligibility requirement in Section 2102(a)(3)(A)(i) of the CARES Act to be ineligible for regular UC.** Therefore, the individual may not receive PUA.

UIPL 16-20, Change 2, Attachment I, p. I-6 (DOL ETA 7/21/20).

If the individual is not receiving paid leave benefits and is unable or unavailable to work because he or she is the primary caregiver for the student(s), the individual may be eligible for PUA. An individual who is permitted to work from home, but must provide such ongoing and constant attention to the student(s) for whom he or she is the primary caregiver that working from home is not possible, may be considered unable or unavailable for work. **Provided the individual is not eligible for regular UC, EB, and PEUC,** then the individual meets the provisions of item (dd) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act and may collect PUA.

UIPL 16-20, Change 3, p. 3 (DOL ETA 8/27/20).

PUA is a benefit of last resort and, in general, provides unemployment benefits to individuals who are: (1) **not eligible for regular unemployment compensation (UC), Pandemic Emergency Unemployment Compensation (PEUC), or Extended Benefits (EB),** including those who have exhausted all rights to such benefits, and those who are self-employed, seeking part-time employment, do not have sufficient wage history, or otherwise would not qualify for regular UC, PEUC, or EB; **and** (2) unemployed, partially unemployed, or unable or unavailable to work due to a specific COVID-19 related reason...

UIPL 16-20, Change 5, p. 2 (DOL ETA 2/25/21).

To be eligible for PUA, the state must verify that the individual is not eligible for regular UC (or PEUC or EB).

UIPL 16-20, Change 5, p. 4 (DOL ETA 2/25/21).

An individual is not eligible for PUA if they are otherwise eligible for regular UC (or PEUC or EB).

UIPL 16-20, Change 5, p. 6 (DOL ETA 2/25/21).

This is but a sample of the explicit and prolific guidance. You simply cannot get PUA if you are eligible for regular benefits, extended benefits, or PEUC. If you are eligible for regular benefits but serving a penalty week, you cannot get PUA. If you are eligible for regular UI but have a 100% offset due to overpayments, still you cannot get PUA. *UIPL 16-20, Change 1, Attachment I, p. I-9.* The Department of Labor provides a step by step rubric, and this makes very clear that the progression is first regular benefits, then extended benefits, then PEUC, and only if all these options are not available can PUA be considered. *UIPL 14-21, Attachment I (DOL ETA 3/15/21).*

PUA Benefit amount

When calculating the amount of PUA, it is elementary that:

“PUA [Weekly Benefit Amount or] WBA is equal to the WBA authorized under state UC law where the individual was employed.”

UIPL 16-20, p. 4 (DOL ETA 4/5/20). “The base period for computing a PUA WBA is Calendar Year (CY) 2019.” *UIPL, 16-20, Change 1, Attachment I p. I-2 (question 6) see also p. I-3, questions 11-13.*

The federal government supplies a chart providing in relevant part:

Calculating the Weekly Benefit Amount (WBA)
Pandemic Unemployment Assistance (PUA)

If an individual . . .	And if . . .	Then
(1) has base period wages	Wages <u>sufficient</u> under state UC law for monetary qualification	<p>Compute a WBA for the individual under state UC law.</p> <p>(a) If computation exceeds 50% of AWBA, the individual receives this WBA (though it may not be higher than the state’s max WBA for regular UC). (20 C.F.R. §625.6(a)(1)).</p> <p>(b) If computation is less than 50% of AWBA, individual will receive the minimum WBA (50% of state AWBA). (20 C.F.R. §625.6(b)).</p>
(2) has base period wages	Wages <u>insufficient</u> under state UC law for monetary qualification	An individual will receive the minimum WBA state AWBA). (20 C.F.R. §625.6(b)).

UIPL 16-20, Change 1, Attachment II. The minimum WBA is calculated using the Average Weekly Benefit Amount (AWBA) as set out in this chart. “States must use *UIPL No. 03-20* to identify their AWBA for purposes of PUA.” The minimum weekly PUA benefit amount in Iowa is \$203. Again, this attachment makes clear that “The PUA base period is CY 2019.” *UIPL 16-20, Change 1, Attachment II.*

Benefit offsets, and the like are also taken from state law. Thus “[a]n individual must report any earnings from covered employment or income from self-employment each week. **The individual’s WBA must be reduced** on account of such earnings and income **as prescribed under state law.**” *UIPL 16-20, Change 5*, p. 4 (DOL ETA 2/25/21) (emphasis added). The Department of Labor gives additional detail:

- a. Total Unemployment. The WBA payable to an individual for a week of total unemployment is equal to the individual's most recent WBA (including any dependents’ allowances) for the applicable PAP.
- b. Partial and Part-Total Unemployment. **To determine the amount payable for a week of partial or part-total unemployment, the state will calculate the payment amount in accordance with the state law applicable** to such a week of unemployment.
- c. **The terms and conditions of the state law which apply to claims for regular compensation and extended benefits and the payment thereof shall apply to claims for PUA** and the payment thereof except as provided in these operating instructions and any additional guidance issued regarding the PUA program.

UIPL 16-20, Attachment I, p. I-10 to I-11 (DOL ETA 4/5/20)(emphasis added); *see also UIPL 16-20, Change 4, Attachment I*, p. I-20 (operating instructions repeat this). These directives follow from the interplay between code and regulation. Specifically, the CARES Act provides that “[e]xcept as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section...” Cares Act §2102(h). This section of the CFR governs disaster unemployment assistance (DUA). In those regulations, the WBA is determined by reference to state law, including any reductions made for earnings. 20 CFR 625.6(f)(1).

Legal Basics: Between Terms Denial

The Federal Unemployment Tax Act (FUTA), 26 U.S. C. § 3301 et seq., establishes certain minimum federal standards that a state must satisfy in order for employers in a state to receive credit against their Federal unemployment tax. See 26 U.S.C. § 3304(a). In 1970 Congress passed the “Employment Security Amendments of 1970” P.L. 91-373. Section 3309 of that law for the first time imposed a requirement on states that their unemployment laws must cover employees at state-run “institutions of higher education.” P.L. 91-373, §3309, 84 Stat. 697-98. In 1976 Congress passed the “Unemployment Compensation Amendments of 1976.” That law’s introductory text states it is “[t]o require States to extend unemployment compensation coverage to certain previously uncovered workers...” PL 94-566. It is this law that included the between terms and years denial for *all* academic institutions not just colleges and universities. PL 94-566, §115, 90 Stat. 2670, *codified at* 26 U.S.C.§3304. In 1971 Congress explained that the between terms/years provision (which at the time only applied at institutions of higher learning) was “intended to insulate the institutions against benefit claims during vacation, semester-break, or sabbatical leave periods when individuals are paid by but do not perform services for the institutions.” *Stand. Comm. Rpt. No. 429, Sen. J.* at 978 (1971).

In conformance with 26 U.S.C. §3304(a)(6) the Code of Iowa has a specific requirement for benefits paid to teacher and instructional personnel:

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

....

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, **except that:**

a. **Benefits** based on service in an **instructional**, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization **shall not be paid** to an individual for any week of unemployment which begins during the period between **two successive academic years** or during a **similar period** between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract **or** reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Code §96.4(5)(a)-(d). We note two things. First, only the credits for the employer who had reasonable assurance are deleted from the claim. This follows from the provision denying "[b]enefits based on service in an instructional, research, or principal administrative capacity...". Iowa Code §96.4(5)(a). The regulations thus say that "[b]enefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause **the denial of the use of such**

wage credits.” 871 IAC 24.52(6) (emphasis added). This means that if there are other credits, and no reasonable assurance applies to those credits, then those credits may be used over the “between terms” period. *Id.* Second, the Code is explicit that the denial of the ability to draw on educational credits only applies during the period of reasonable assurance. The Code provides that the benefits “shall not be paid to an individual **for any week** of unemployment which begins **during the period** between two successive academic years...” Iowa Code §96.4(5)(a)(emphasis added). Once the term starts the *between* terms denial applies no more. In cases of credits being deleted from the claim, once the term restarts, those credits can be drawn from again.

Overlooked by the Administrative Law Judge in this case is that **the between terms denial also applies in PUA claims.** Again, the federal government has been clear on this point.

Pandemic Unemployment Assistance (PUA) under Section 2102 of the CARES Act. PUA eligibility requires that an individual is not eligible for regular UC, Pandemic Emergency Unemployment Compensation (PEUC), or Extended Benefits (EB) and that the individual is unemployed, partially unemployed, or unable or unavailable for work because of a listed COVID-19 related reason in Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

Between academic years or terms and during established and customary vacation periods or holiday recesses, the individual is unemployed from the educational employment because they are between and within terms. **Therefore, an individual is not unemployed from the individual’s educational employment for one of the listed COVID-19 related reasons and cannot establish eligibility for PUA** based on services subject to the between and within terms denial.

However, if an individual has other employment between academic years or terms or during established and customary vacation periods or holiday recesses that is not included in the “between and within terms” denial provisions discussed in this UIPL, and is unemployed from that other employment because of a listed COVID-19 related reason, the individual may be eligible for PUA.

If an individual qualifies for PUA during the time period in which the “between or within terms” denial provisions would apply, then wages from the educational institution may not be used to establish the individual’s weekly benefit amount for PUA.

UIPL 10-20, Change 1, p. 6 (DOL ETA 5/15/2020)(emphasis added). This Change was issued in May of 2020 to UIPL 10-20. The original UIPL was issued in March, and discussed generally the requirement of being unemployed in order to get PUA benefits. At that time, the summer had not started, and just before it did the Department of Labor issued this change, making crystal clear that if a claimant is not allowed benefits over the summer because of the reasonable assurance provision, then that claimant will also not be allowed PUA. The reasoning was simply that teachers who are off for summer break are unemployed because it’s the summer, not because of COVID.

Later, the DOL created a new form of eligibility based on the idea that COVID-related volatility in schedules caused a lack of reasonable assurance, but only if the individual was otherwise ineligible for state benefits. The DOL explained:

- A. *Individual does not have a contract or reasonable assurance.* An individual who:
- (1) has provided services to an educational institution or educational service agency;
 - (2) lacks a contract or reasonable assurance and, as a result, is not subject to the

“between and within terms” denial provisions; and (3) is not otherwise eligible for

Page 10
24B-DUA-00009

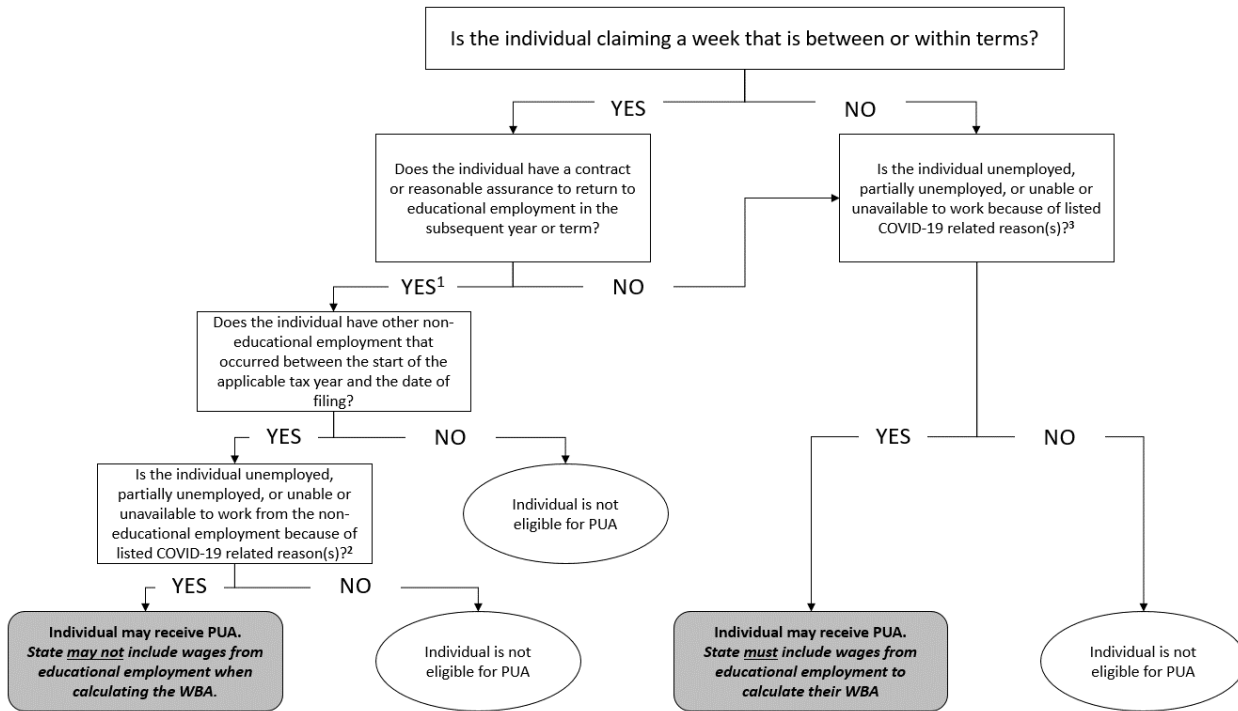
regular UC (or PEUC or EB) may self-certify eligibility for PUA under this new COVID-19 related reason if they are subject to significant volatility in the school schedule.

If the individual does not have a contract or reasonable assurance to return and self-certifies eligibility under this new COVID-19 related reason (or another COVID-19 related reason that is applicable to their situation), the individual may use wages from the educational institution to potentially qualify for a WBA that is higher than the state’s minimum PUA WBA.

B: An individual is generally **not eligible for PUA** if they: (1) have provided services to an educational institution or educational service agency; and (2) are **filing for a week that is between or within terms and they have a contract or reasonable assurance** to return in the subsequent year or term, and, as a result, they are denied regular UC (or PEUC or EB). However, the individual may be eligible for PUA if they have other non-educational employment from which they are able to self-certify that they are unemployed, partially unemployed, or unable or unavailable to work for a different COVID-19 related reason. As described in Section 4.e.i. of UIPL No. 10-20, Change 1, wages from the educational institution may not be used to calculate the individual’s PUA WBA.

If school schedules or planned school openings are disrupted and an individual is found to no longer have a contract or reasonable assurance to return in the subsequent year or term, then they can establish eligibility going forward as described in subparagraph (A) under this new COVID-19 related reason or another COVID-19 related reason that is applicable to their situation.

UIPL 16-20, Change 5 p. 7 (DOL ETA 2/25/21). The DOL thus supplies a flow chart:



UIPL 16-20, Change 5, Attachment II (DOL ETA 2/25/21). Following the flow, if the claim is made between terms, and there is reasonable assurance to work in the fall, and the individual does **not** have non-educational employment then the individual is not eligible for PUA. Thus, if the claimant *has* reasonable assurance but no non-school employment then that claimant is not eligible for PUA benefits between terms.

Factual Errors in Administrative Law Judge Decision

We have had difficulty giving deference to the Administrative Law Judge’s findings because some of them are patently wrong. They are not just inconsistent with the evidence, but more than that are *internally* inconsistent. Thus, we have been very discriminating in reviewing the Administrative Law Judge’s factual findings. We detail some of the self-evident errors here.

Wages & Benefit Calculation: The first chart on page 2 of the decision in case 00009 is inexplicably blank. The chart literally shows no wages for the Claimant in calendar year 2019. We note, not for the last time, that the Claimant filed her regular benefit year claim in the second quarter of 2020. “[T]he base period is the first four of the last five quarters completed before the quarter in which the claim was filed.” *Stanley v. EAB*, No. 16-2047, slip op. at 3 (Iowa App. 1/10/2018); see Iowa Code §96.19(3)-(4); 871 IAC 24.1(11) & (21). In order to be monetarily eligible for regular benefits “the claimant must have (1) base period wages greater than 125% of an individual’s highest-earning quarter within the base period, (2) highest-earning-quarter wages at least 3.5% of the statewide average annual wage for insured work, and (3) second-highest-earning-quarter wages at least 50% of the wages required by (2).” *Stanley v. EAB*, No. 16-2047, slip op. at 4 (Iowa App. 1/10/2018)(summarizing Iowa Code §96.4(2)).

Given that the Claimant filed for regular benefits in May of 2020 we determined the base period by excluding the second quarter of 2020, and the first quarter of 2020, and then using the fourth, third, second and first quarters of 2019. In other words, calendar year 2019 is the base period for the regular benefit claim. Of course, “[t]he base period for computing a PUA WBA is Calendar Year (CY) 2019.” *UIPL, 16-20, Change*

I, Attachment I p. I-2 (question 6) *see also* p. I-3, questions 11-13. So all the calculations will apply equally to both.

The base period wages for the 2020 regular benefit claims is available from the “DBIN” (inactive claim) database which the Administrative Law Judge took official notice of. Those base period (calendar year 2019) wages are:

Employer	Q1, 2019	Q2, 2019	Q3, 2019	Q4, 2019
DMACC	\$4921.71	\$3314.00	\$744.26	\$4261.56
Upper Iowa U	\$1050.00	\$1050.00		
Grand View	\$3450.00	\$1080.00		\$7080.00

Total Wages: \$26,951.81 Credits (=1/3 wages): \$8,983.94 WBA [1 dependent]: \$500

During the claim year in question, the Code of Iowa set out the calculation for the weekly benefit amount. The weekly benefit amount is “[t]he full amount of benefits a claimant is entitled to receive for a week of total unemployment.” 871 IAC 24.1(13)(c). The weekly benefit amount depends on the number of dependents, but may not exceed a specified state weekly maximum. The Code:

[A]n eligible individual’s weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual’s total wages in insured work paid during that quarter of the individual’s base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work...:

If the number of dependents is	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

Iowa Code §96.3(4)(a) (2020). Since the Claimant claimed 1 dependent her weekly benefit is at most 1/22 of her average weekly wage in her high quarter, and is subject to the 55% maximum of the statewide average weekly wage. The Statewide Average Annual Wage applicable to this claim was \$47,290.57, making the applicable average weekly wage \$909. *See Iowan’s Unemployment and Injury Benefits Increase*, (June 28, 2019) (<https://www.iowaworkforcedevelopment.gov/iowans%E2%80%99-unemployment-and-injury-benefits-increase>). Thus, for this Claimant the maximum benefit amount is 55% of \$909, that is, is equal to \$500.

Now we can raw calculate the weekly benefit amount. Here, the fourth quarter of 2019 is the high quarter with earnings of \$11,341.56. With one dependent we take a 22nd to get a weekly benefit amount of \$515.53. But this is not the Claimant’s weekly benefit amount because the Code provides that for one

dependent the cap is 55% of the statewide average weekly wage applicable to the claim in question. The cap is \$500. Thus, based on the high quarter earnings of \$11,341.56, and one dependent, and the Code we automatically generate a weekly benefit amount of \$500. Twenty-six times this amount is \$13,000.00, and since this is more than the wage credits of \$8,983.94 the Claimant's maximum benefit amount (that is the most in regular benefits she could collect *total*) would be \$8,983.94. By calculation she had a weekly benefit amount of \$500, and a maximum benefit amount of \$8,983.94 and both these figures match what is in the agency records.

The claim records show that between the week ending May 30, 2020 and August 15, 2020 the Claimant reported no wages and was paid \$500 a week for all thirteen weeks. She thus had \$8,983.94 less \$6,500 or \$2,483.94 remaining on her regular benefit claim. Then over the next eight weeks she reported \$300 a week. She was paid partial benefits for these weeks.

For partial benefits, whether regular Iowa benefits or PUA, the calculation is specified under the Iowa Code:

The Code, again, provides the answer:

An individual who is partially unemployed in any week as defined in section 96.1A, subsection 37, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount **equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount.** The benefits shall be rounded to the lower multiple of one dollar

Iowa Code §96.3(3); 871 IAC 24.18 ("If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount."). So, we start with the WBA. Here it is \$500. We take a quarter (rounded to the nearest dollar), and get \$125. We now get the part of wages exceeding \$125 and take that from \$500 in order to get the reduction. So \$300 less \$125 is \$175. We then take \$175 from \$500 to get a benefit amount of \$325. The Claimant did collect \$325 for seven of the eight weeks she reported \$300. This is \$2,275. So this left her with \$2,483.94-\$2,275=\$208.94 on her regular benefit claim. She collected \$208.94, thereby exhausting her regular benefit claim on October 17, 2020. She continued to file weekly claims every week through February 6, 2021 and she was paid PEUC for each week according to law.

Earnings Chart Errors: The second chart on page 2 of the decision in case 00009 is wrong. Benefit weeks end on Saturdays, and start on Sundays in Iowa. 871 IAC 24.1(135). None of the days listed in this chart is a Saturday. Only the first week is a Sunday. The date "6/31/20," obviously does not exist. Even June 30, 2020 was a Tuesday. All we can say about the chart is that it shows 13 weeks with zero earnings. Given this we can make the chart accurate if we replace the first column with the following column:

BWE
5/30/2020
6/6/2020
6/13/2020
6/20/2020
6/27/2020
7/4/2020
7/11/2020
7/18/2020
7/25/2020
8/1/2020
8/8/2020
8/15/2020
8/22/2020

All of which is to say everyone agrees that the Claimant was paid benefits of \$500 a week for the thirteen weeks list immediately before this paragraph. Also, all agree that over these weeks she neither earned nor was paid *any* wages for any of *these* 13 weeks. The 13 weeks by the Administrative Law Judge are not all weeks, none depict claim weeks, and the chart is therefore unreliable. It is repeated on page 6-7. The accompanying text, however, accurately says that “The claimant was totally unemployed for the first period of her unemployment from the week ending May 24, 2020, to the week ending August 21, 2020.” This is accurate if “August 21” is corrected to “August 22.” Total unemployment means no services were performed or paid for, and that happened here. The chart is 13 weeks of zero earnings, and the Claimant was thus due 13 weeks of regular benefits of \$500 per week. That much is correct. To be clear after our rulings today (including the benefit overpayment cases), the Claimant is keeping this money and the associated FPUC and Lost Wages Assistance. There are no problems with the 13 summer weeks – she got the money she should have gotten, and she keeps that money. As we set out below, if she were to get PUA instead for those 13 weeks she would get no more money. In fact, her weekly benefit amount of \$500 was the maximum and so she has received the most benefits *anyone* could have ever been paid over those 13 weeks in 2020.

We now turn to the second chart on page 2 of the Administrative Law Judge’s decision. This chart shows all Saturdays in the first column. The remainder is exactly the wages reported by Iowa Workforce which lead to today’s regular and PEUC overpayment decisions. Excerpts from this chart appears again at page 7-8 (broken into parts) of the decision. The *chart* is correct, and we have adopted it. The Administrative Law Judge’s summary of the chart is self-evidently incorrect.

One oddity about this is the Claimant did not appeal the PUA case to us. But information in this chart is identical to that used in case 04703 to overpay the Claimant, and which the Claimant contests in that case. Moving past that issue, in this case the Administrative Law Judge writes “The claimant did not exceed this threshold [\$515] for the second period of her unemployment from the week ending August 29, 2020, through the week ending October 31, 2020. At most the claimant earned \$462.84 in a week during this period.” *Decision of Administrative Law Judge*, p. 7. The Administrative Law Judge then sets out a chart, with earnings, for those weeks. None of them sum to \$462.84. None of them would sum to a figure with 84 after the decimal. The only way *we* can get \$462.84, is to take a wage of \$378.84 (listed as DMAAC wages for 7 weeks), and add to it the 84 cents from that figure but instead calling it \$84. Whether such a typo accounts for this mysterious number we cannot say. But in any event, the chart used by the Administrative Law Judge

adds up differently than he described in his decision. This error is manifest, and we have corrected it.

Legal Errors in Administrative Law Judge Decision

Again, with due respect to the learned Administrative Law Judge, the legal errors in this decision are significant.

First, as the Administrative Law Judge recognized, the Claimant could not be eligible for both PUA and regular benefits at the same time (which we explain in excruciating detail above). Thus, the Administrative Law Judge allowed PUA but only after finding that the Claimant was ineligible for regular benefits over the summer between terms. Inexplicably, the Administrative Law Judge also found the Claimant ineligible for regular benefits once the term started. The errors are three-fold:

1. No one protested regular benefits, and we thus would not disqualify on a between terms denial at this late date. Claimant is thus allowed regular benefits over the summer, and during the school year.
2. The between terms denial also applies to PUA, as detailed above.
3. Even if the between terms denial applied to deny benefits over the summer it would not apply once the term starts.

For the summer the first two points are decisive. The Claimant is eligible for the full \$500 benefit amount over the 13 weeks of the summer, that is, from BWE 5/30/20 through BWE 8/22/20. She also is eligible for the applicable FPUC and Lost Wags Assistance for these 13 weeks. Being eligible for regular benefits she cannot be put on PUA. Furthermore, if we disqualified her for regular benefits based on a between terms denial, we would likewise have to disqualify her for PUA for the same reason. This means qualified for regulars, or disqualified for regulars, either way the Claimant cannot get PUA over the summer. We do anticipate that the Claimant would rather be *qualified* for regulars and keep the money she was paid, rather than get an addition \$6,500 regular benefit overpayment without any PUA to offset. Fortunately, we see no basis for disqualification and Claimant is to keep the money she got over these 13 weeks.

As for BWE 8/22/20 and going forward it is clear that the terms had started. She thus would no longer be *disqualified* for either regular or PUA based on a between term denial. But because she is allowed regular benefits we hope it is clear by now, that she would be ineligible to get PUA. But, as we set out below, it would do her no good to get PUA anyway.

PUA Benefits Would Not Change Anything

Finally, we note for the Claimant and also for Claimant's counsel what would happen had we allowed PUA benefits. The Claimant would have gotten zero additional benefits and would still owe the same regular benefit overpayment (which, after today, is zero). Here is how it works. We note this is based on explicit federal laws which no reasonable person would find are subject to a different interpretation.

As we set out above, the Claimant could only be eligible for PUA for weeks she is ineligible for regular benefits. Even if she were paying back an overpayment with a 100% regular benefit offset still she would not be eligible for PUA. *UIPL 16-20, Change 1, Attachment I*, p. I-9. The benefits are calculated identically and the same conditions from state law apply. This means for those weeks she hits the earning's cap for regular UI she would also be ineligible for PUA. As Administrative Law Judge Nelson wrote in this case "However, there are periods when she exceeds the partial unemployment earnings limitation. For those weeks she is

denied PUA benefits.” *Decision of Administrative Law Judge*, p. 3. This is undoubtedly correct, as we set out above, and Claimant made no appeal of this partial disallowance. The upshot:

- The PUA benefit amount is calculated exactly as the regular benefit amount
- The base period for both claims is calendar year 2019
- Earnings affect both benefits equally
- FPUC and Lost Wages Assistance are equally payable on both.

So then what result if we were to affirm the Administrative Law Judge? First off, if we applied the correct analysis the Claimant would be denied both PUA *and* regular benefits over the summer, which would *increase* her regular benefit overpayment by \$6,500. (Also, a same hours and wages disqualification does not apply to total unemployment). But for now, we ignore that, and assume that somehow, we are able to place the Claimant on PUA, including over the summer.

In such a case the Claimant would now be overpaid the entire \$8,983.94 in regular benefits she received. This would then be offset by PUA payments. But in weeks when the Claimant misreported wages she would get the *correct* amount of PUA as a credit – not the original *incorrect* amount of benefits. So the offset would only be partial, and she would still owe a regular benefit overpayment (except **see today’s decision wiping out that overpayment**).

So we take a couple weeks as an example. The Administrative Law Judge’s chart for 9/5/20 (which comports with the record in case 04703) shows a total of \$618.09 in earnings. This rounds to \$618 and exceeds the \$515 cap identified by the Administrative Law Judge. (Actually the cap is \$514 since the Code states “earns less than” \$515). The Claimant originally reported only \$300 for that week, and was paid \$325, which is overpaid (as originally calculated). Since she exceeds the earning cap for the week, as found in this case and in case 04703, she would not be eligible for *either* PUA *or* regular benefits. The allowance of PUA would do nothing to offset the \$325 overpayment in regular benefits for BWE 9/5/20.

Next up in BWE 9/12/20 the Claimant earned a total of \$491.81 which rounds to \$492. This yields a benefit payment due of $\$500 - (\$492 - \$125) = \133 . Since the Claimant previously reported only \$300 in earnings, she was paid \$325 in regular benefits as a result. She has thus received, as originally calculated, a regular benefit overpayment of $\$325 - \$133 = \$192$ for that week. If she were placed on PUA she would be overpaid the entire \$325 in regular benefits first (to be made eligible for PUA). She then would be due the \$133 in PUA because we would use the correct earnings figure, not the original incorrect earnings figure. That \$133 would, under the benefit offset program, partially offset the \$325 regular benefit overpayment. This would leave the exact same \$192 as the regular benefit overpayment (but again, only under the original decision, not the one we issue today). So it goes week by week. The Claimant would be overpaid exactly the same amount in regular benefits if she were now placed on PUA.

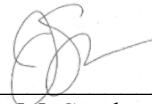
This same process would apply to PEUC overpayments. As a Board majority waives those overpayments we make no additional illustration. The bottom line is there is nothing magical about PUA money. The benefit calculations are identical and the misreporting of wages has the same effect. Placing the Claimant on PUA would not cure her overpayments, but would merely switch the government account being charged for the benefits she is being allowed to keep. (Again, the legal analysis we provided today in case 040703 *has* cured the regular benefits overpayment. Since the Board majority has waived federal overpayments she owes no overpayments anymore.)

All of this is merely for the edification of Claimant and her counsel, to whom we suggest a careful reading of our legal basics section is a must. The “due process” argument of the Claimant overlooks the basic issue that she has to be actually deprived of something of sufficient value to be considered property or liberty. What she thinks she would get with PUA money that she could not get with the **exact same amount** of regular benefits we cannot imagine. Money is fungible and PUA cash buys nothing regular benefit cash cannot also buy. The amounts being identical by law the Claimant is not deprived of anything at all.

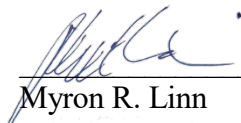
We deny PUA benefits because there is no ground to deny regular benefits, and one cannot get both. The fact that it makes no tangible difference even if we put the Claimant on PUA factors into our analysis not in the slightest.

DECISION:

The administrative law judge’s decision dated July 22, 2024 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not eligible for PUA benefits for any period at issue in this case as she *was* eligible for Regular benefits or PEUC for any such period. Accordingly, she is denied PUA benefits.



James M. Strohman



Myron R. Linn



Ashley R. Koopmans

RRA/mes

DATED AND MAILED SEPTEMBER 11, 2024