

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

SCOTT A WILEY	:	
	:	HEARING NUMBER: 21B-UI-14080
Claimant	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
VENUWORKS OF CEDAR RAPIDS LLC	:	
	:	
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: 24.23-26, 96.4-3

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. 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**.

We write to explain to the Claimant why his claim for **partial** benefits is not viable even though he works out of a hiring hall. In past cases we have found such Claimant to not be “on call” workers, and reversed disqualifications under a regulation that states “[a]n individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual” 871 IAC 24.22(i)(3). We have ruled this regulation does not apply to hiring hall cases. But that only means that such a worker is not prevented from *ever* receiving benefits under the “on call” provision. This case does no turn on that provision.

In this case the Claimant has filed a second benefit year claim based on credits earned in part-time jobs. Moreover, those jobs all experienced a downturn in work **during the base period during which the credits for this claim were earned**. The Claimant reports wages for every week he claimed benefits, and therefore seeks “partial” benefits. Given his wage credits for this 2021 claim, he is thus a part-time worker who seeks partial benefits. The regulations of the Department address that situation:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

....

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

871-24.23(26). Thus if the part-time worker experiences a downturn in hours, but that downturn is consistent with the contract of hire then the worker is **not** considered partially unemployed from the part-time job. The ineligibility is based on the idea that worker is getting the same level as work as in the base period, and that he is not unemployed. *See Powell v. EAB*, 861 N.W.2d 279 (Iowa App. 2014).

This regulation does not apply during weeks of *total* unemployment, that is, when the Claimant earns no wages. During this 2021 claim, however, this Claimant reported wages for every week he sought benefits. In fact, he earned more than his benefit amount plus 15 dollars, and thus failed to meet a monetary condition for receiving benefits, in 5 of the 16 weeks he filed for benefits in 2021. In the remaining eleven weeks he reported wages, and so seeks partial benefits. But given his part-time work in the base period, and the evidence that he was not guaranteed a given schedule, he does fall under the same hours and wages provision of 871-24.23(26).

The Claimant, however, may be able to collect **PUA** benefits for any week we have so disqualified him.

Our denial today does not bar receipt of certain special pandemic related benefits. In fact, being ineligible from state unemployment benefits is a prerequisite to Pandemic Unemployment Assistance [PUA]. That law 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, potentially as far back as February 8, 2020, for most cases. The federal Department of Labor has instructed that **eligible persons would include**:

- a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. ...
- b) A member of the individual’s household has been diagnosed with COVID-19. ...
- c) The individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID-19. ...
- 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....

- e) 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. ...
- f) 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. ...
- g) 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. ...
- h) 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. ...
- i) The individual has to quit his or her job as a direct result of COVID-19. ...
- j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency. ...
- k) The individual meets any additional criteria established by the Secretary for unemployment assistance under this section....

UIPL 16-20, Attachment 1.

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Attachment_1.pdf).

More recently, the federal Department of Labor has instructed that **eligible persons would also include:**

An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

This new COVID-19 related reason **expands eligibility** beyond the current provision of item (jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act, which is limited to situations where the individual's place of employment is closed. Under this new COVID-19 related reason, **if** an individual is laid off because the place of employment is partially closed (either permanently or temporarily) or **the individual has experienced a reduction in hours, the individual may now selfcertify eligibility.**

UIPL 16-20, Change 5, p. 8.

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_5_acc.pdf).

In most cases, federal law requires all PUA claims to be backdated to as early as February 8, 2020 depending on when the applicant's COVID-related unavailability or job loss began. The upshot is that if Claimant can make the necessary PUA showing Claimant may very well be eligible for PUA for any qualifying week. **Our ruling today is no bar to PUA.**

We note that although the PUA program terminated in Iowa as of June 12, 2021, this Claimant had started reported wages greater than the earnings limit during that week, claimed for three more weeks, during which he earned too much to get benefits, and then stopped filing claims.

The Claimant should note the following important information about a PUA claim:

If the Claimant does not already have a PUA claim on file, the Claimant **must file for PUA benefits within 21 days** of this decision.

Additional information on how to apply for PUA can be found at
<https://www.iowaworkforcedevelopment.gov/pua-information>

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RRA/fnv