

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

KRISTI L FOSTER

Claimant

: **APPEAL NUMBER:** 22B-UI-10765

: **ALJ HEARING NUMBER:** 22A-UI-10765

:
:
:
:
:
:
:
:

**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: 116-136

DECISION

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. Two members of the Board modify the decision in the Claimant's favor. 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**:

The Board adds to the findings of fact that the Claimant is self-employed at Mahaska Hearing Aid Center, a business she owns and which has regularly reported her covered wages. This business was closed from March 29, 2020 through June 27, 2020 as a direct result of the the COVID-19 pandemic.

The Department of Labor provides the following guidance on a state's ability to convert a UI claim to a PUA claim without having the claimant file a new application.

6. Question: Can the state **convert** an ineligible regular UC claim to a PUA claim?

Answer: It depends. **A new application would not be required if the state has gathered sufficient information on the initial application, including a self-certification** from the individual that one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act is applicable.

The base period for computing a PUA WBA is Calendar Year (CY) 2019, which may be different from the regular UC claim, so additional information may be required. Reference section C and Attachment I in UIPL No. 16-20 Change 1 for additional information on calculating the PUA WBA.

UIPL, 16-20, Attachment I, Change 1, p. I-2 (DOL ETA 4/27/2020). Certainly by the time of the Administrative Law Judge hearing in this matter the Claimant had supplied sufficient information in sworn statements to constitute a self-certification that she was not working due to a covered reasons, namely, her COVID-19 diagnosis and the closure of her business. For this reason we will now convert the Claimant's regular benefit claim to a PUA claim as allowed by the Department of Labor.

When a claim for PUA is filed after the end of the program special rules apply.

Iowa ended participation in all Pandemic benefits including PUA as of June 12, 2021. <https://governor.iowa.gov/press-release/iowa-to-end-participation-in-federal-unemployment-benefit-programs%C2%A0citing-strong>. PUA is a federal benefit and the federal Department of Labor address the situation where someone files for PUA after the end of the program in a State:

2.Question: May an individual file a new PUA application after the 30-day required period if they filed for regular unemployment compensation (UC) prior to **October 6, 2021**, but the state does not make a determination of ineligibility for regular UC until after October 6,2021?

Answer: Yes. If the individual self-certifies that they were unemployed, partially unemployed, or unable or unavailable to work because of approved COVID-19 related reason(s) for weeks of unemployment ending on or before the date of state termination or program expiration (whichever comes first), they may file a new PUA application after the 30-day required period only if they: (1) **filed a regular UC claim prior to the end of the 30-day required period** for accepting new PUA applications after the date of state termination or program expiration (whichever comes first) **and** (2) **are found ineligible for regular UC (or PEUC or EB) after the end of the 30-day required period**. However, such an individual must file the PUA claim within 21 days of the determination of ineligibility for regular UC. The state must notify affected individuals of this PUA filing deadline, which may be done as part of the notification that their UC (or PEUC or EB) claim was denied or in a separate notification.

UIPL 16-20, Change 6, Attachment 2.

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change-6_Attachment-2.pdf

First of all, the 30 day processing period in Iowa ended thirty days after June 12, 2021. So the period for processing new PUA claims ended on July 12, 2021. The Claimant cannot file a PUA claim any earlier than today, which is well past the 30-day period. The exception to deadline is when a claim for regular benefits is denied *after* July 12, 2021. Here the denial of regular benefits is today, and so the we are permitted to convert the claim to a PUA claim even though the PUA benefit has ended. This means the Claimant can have a PUA claim, and the next issue is backdating of that claim.

Since the Claimant filed a regular UI claim on March 29, 2020 and is now found ineligible for that claim, she falls under the federal backdating provisions:

As discussed in Question 4 of Attachment I to UIPL No. 16-20, Change 1, individuals filing for PUA must have their claim backdated to the first week during the Pandemic Assistance Period (PAP) [which commences on February 8, 2020] in which the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Section 201(f) of the Continued Assistance Act provides a limitation on backdating for claims filed after December 27, 2020 (the enactment date of the Continued Assistance Act).

If an individual filed a **regular** UC claim on or before **December 27, 2020**, and the state later determines that the individual is not eligible for regular UC, the state should use the date the claimant filed the **regular UC claim** as the date of filing for the **PUA claim, so long as the individual met the requirements for PUA as of that date**. For example, if the individual filed a regular UC application on October 4, 2020 and the state determined the claimant was not eligible for regular UC on January 15, 2021, the PUA application will be deemed to have been filed on October 4, 2020 and the PUA claim will be backdated to that date.

[Attachment I to UIPL No. 16-20, Change 4](#), p. I-18 to I-19 (DOL ETA 1/8/21). Additional explanation was more recently provided:

An individual who establishes retroactive initial eligibility for PUA must then be required to complete continued claim forms for each week (including the self-certification declaration that includes the original and expanded list of COVID-19 related reasons) to receive payment. **States must process this additional information and make retroactive payment as appropriate**. This includes paying FPUC at the appropriate amount for any weeks paid during the relevant time Period

[UIPL No. 16-20, Change 5](#), p. 12 (DOL ETA 1/8/21).

We are converting the claim to a PUA claim today, which is after July 12, 2021, and so **backdating to March 29, 2020 is to be allowed**. Given this conversion following a denial of regular benefits on a regular benefit claim predating December 27, 2020, the PUA claim “must be backdated to the first week during the Pandemic Assistance Period that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(i) of the CARES Act.” *Attachment III to UIPL No. 16-20 Change 4*, p. III-1 (DOL ETA 1/8/2021). This means that the period of the closure at issue in this case will be within the Pandemic Assistance Period and may be compensable for PUA benefits, if the Claimant is otherwise eligible for those benefits.

Merits of PUA Claim: The Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, Sec. 2102, in conjunction with the Continued Assistance Act, Public Law No: 116-260, and the American Rescue Plan Act, Public Law No: 117-2, provide for unemployment benefit 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.

The federal Department of Labor has instructed that **eligible persons would include:**

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. Examples include:

a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

...

j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency.

UIPL 16-20, Attachment 1, p. I-4 to I-6.

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

Given our findings of fact, and these provisions we find the Claimant is **eligible for PUA** during any time she was unemployed because of the business closure, or because she was diagnosed with COVID-19. Based on the current state of the record benefits are allowed from March 29, 2020 until June 20, 2020 excluding the week ending May 16, 2020 during which week the Claimant reported her normal wage. This is a total of 11 weeks, and our calculations indicate that, using 2019 as the Claimant's base period, her weekly PUA benefit amount, with two dependents, will be \$518 – the same as her regular benefit amount in the 3/29/20 claim.

Based on our ruling in this case, the Claimant should receive sufficient PUA payments to cover her regular benefit overpayment. But her regular benefit overpayment of \$5,698 cannot be waived and that overpayment still stands. Claimant should, on remand, be eligible for \$5,698 in PUA benefits. Normally IWD will use half of the PUA benefits to offset half the regular benefit overpayment. Then IWD would then pay the Claimant any remainder of PUA that might be left over. The Claimant may want to use such a remainder of our PUA award to pay off the remaining regular benefit overpayment. IWD may also use the 100% offset work around to simply wipe out the regular benefit overpayment and then pay Claimant whatever PUA may be left (this should be none). Either way the Claimant should end up with sufficient PUA to cover the regular benefit overpayment.

DECISION:

The administrative law judge's decision dated October 11, 2022 is **AFFRIMED ON THE ISSUE OF REGULAR BENEFIT DENIAL.**

PUA BENEFITS ARE ALLOWED. The Employment Appeal Board concludes that the Claimant is eligible for Pandemic Unemployment Assistance and these are allowed from March 29, 2020 until June 20, 2020 (excluding the week ending May 16, 2020).

The matter is remanded to Iowa Workforce Development for the appropriate calculation of benefits, and any other appropriate determination regarding the Claimant's eligibility during the weeks we have allowed benefits.

James M. Strohman

Ashley R. Koopmans

CONCURRING AND DISSENTING OPINION OF MYRON R LINN:

While I concur on the issue of regular benefits, I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would affirm the decision of the administrative law judge without modification.

Myron R. Linn

RRA/fnv