

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

LESA M O'LEARY

Claimant

HEARING NUMBER: 20B-DUA-00464

**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

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

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 it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Lesa O'Leary, last worked as a full-time housekeeper with Oak Knoll Retirement from which she was terminated in February of 2020. In March 2020, the United States declared a public health emergency based on the COVID-19 pandemic. The Claimant experienced difficulty obtaining new employment when she tried to join her friend's cleaning business as the clients did not want a new person in their homes during the pandemic. She also had a job lined up with the Knoxville Nationals cleaning porta-potties, but all special events were cancelled due to the pandemic as well.

The Claimant self-certified that she was able and available for work, but could find no work. The pandemic has resulted in a widespread decline in demand, and as a result the Claimant experienced a substantial loss of income.

REASONING AND CONCLUSIONS OF LAW:

The Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, Sec. 2102 provides for unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020 and ending on or before December 31, 2020, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19.

A person who is monetarily **ineligible** for regular state benefits may still receive PUA, with the benefit amount calculated based on the 2019 calendar year as the base period, although in no event will the weekly benefit amount be below a specified minimum.

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 8, 2020 (for a maximum of 39 weeks). The federal Department of Labor has instructed that **eligible persons would include**:

k) The individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

... The Secretary has determined that, in addition to individuals who qualify for benefits under the other criteria described above, an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities....

UIPL 16-20, Attachment 1.

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

Question: Is a self-employed child care provider who is providing child care for fewer children as a result of the COVID-19 pandemic eligible for PUA?

Answer: If the self-employed child care provider can establish that he or she has experienced a significant diminution of his or her customary full-time services because of COVID-19, he or she may be eligible for PUA under the additional eligibility criterion established by the Secretary pursuant to Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. This individual's benefit amount may be reduced because of income from continued partial employment.

UIPL 16-20, Change 2, Attachment 1.

(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_2_Attachment_1.pdf)

Given our findings of fact, and these provisions we find the Claimant is **eligible for PUA** during any period of time the Claimant experienced a significant diminution of demand for services. The evidence is sufficient to infer that the decrease in demand is due to the Pandemic. Pandemic benefits should not be paid for those periods when the Claimant did have sufficient work.

DECISION:

The administrative law judge's decision dated November 17, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant is eligible for Pandemic Unemployment Assistance for those weeks since February 2, 2020 during which Claimant has experienced a significant diminution of demand for services.

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

AMG/fnv