

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

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**HARRY K WILSON**

Claimant

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**HEARING NUMBER: 20B-DUA-00500**

**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:** PL 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. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

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

Specifically, claimant was unable or unavailable to work because he, with the consultation of doctors, made the decision to not continue working, as his job required him to have contact near many people who may or may not have been wearing masks. The Claimant supplied a note from a health care provider stating "This is a note to confirm that Harry Wilson has the following health condition(s): Heart Disease with Valve Replacement; Over age 65; COPD. These conditions make him high risk for COVID 19 and so he has been unable to work since 03/20/2020."

## 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.

People who are not working as a direct result of one of the conditions listed in the CARES Act, are able to collect PUA, even though unavailable for work and thus not able to collect regular state benefits. The Department of Labor instructs:

E 35. Question: An individual is on approved unpaid medical leave from his or her employer and is not eligible for state UC because he or she is not able or available to work. Would the individual qualify for PUA?

Answer: It depends. **If the medical leave is based on one of the COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual may be eligible for PUA benefits.**

If the individual does not satisfy one of the COVID-19 related reasons and is otherwise not able to work or available for work, he or she is not eligible 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](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1_Attachment_1.pdf)

So even though the Claimant is not eligible for state benefits so long as he is on a leave of absence, because he is not available for work, this does not prevent him from collecting PUA. The issue, then, is whether the reason he is on leave is one of the reasons listed in the CARES Act. Section 2102 of that act states:

(a) Definitions. -- In this section:

(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—

(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;

....

(c) Applicability.—

...

(2) Limitation on duration of assistance.--The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 39 weeks....

Persons unavailable to work for covered reasons may be able to collect PUA during any week this situation persists (for a maximum of 39 weeks). The federal Department of Labor has explained:

To be a “covered individual” under PUA, an individual must also self-certify that he or she is otherwise able to work and available for work, as provided under state law, except that the individual is unemployed, partially unemployed, **unable to work or unavailable for work** due to at least one of the following categories described below:...

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. Examples include:

- An individual who has been advised by a qualified medical professional that he or she may be infected with the coronavirus and that he or she therefore should self-quarantine. For example, an individual had direct contact with another person who has tested positive for the coronavirus or been diagnosed with COVID-19 by a qualified medical professional, and is advised by a health care provider to self-quarantine to prevent further possible spread of the virus. Such circumstances would render the individual unable to reach his or her place of employment.
- An individual whose immune system is compromised by virtue of a serious health condition and is therefore advised by a health care provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by the coronavirus.

UIPL 16-20, Attachment 1, p. I-5.

([https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_16-20\\_Attachment\\_1.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Attachment_1.pdf)).

These examples are not limited to transportation issues. The Department of Labor does give an example of an “individual who is unable to reach his or her place of employment because doing so would require the violation of a state or municipal order restricting travel...” *Id.* at I-5. But this example is discussed in connection with item “e” which gives PUA benefits if “[t]he 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...” *Id.* This further bolsters our conclusions that item “ff” is plainly not so limited. If COVID related medical restrictions imposed on you mean that you can’t get out except for essential business, like obtaining medicine or food, then you can’t reach work within the meaning of item §2102(a)(3)(A)(ii)(I)(ff).

Applying the DOL standards, and the plain text of the statute, the Claimant is unavailable due to pandemic related reasons. This unavailability is from the week commencing March 22, 2020 and for any week during which the Claimant was under the health care provider’s order to quarantine. We find on this record sufficient evidence to allow benefits from the week beginning March 22, 2020 and continuing 39 weeks until December 19, 2020. The Claimant is not allowed after December 19, at this point, only because we have today allowed 39 weeks of PUA benefits and this is the maximum amount of PUA that is allowable at this time. Should Congress extend the PUA benefit the Claimant should watch the IWD website for information on how to apply for any such benefit.

**DECISION:**

The administrative law judge's decision dated October 30, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant is eligible for Pandemic Unemployment Assistance commencing on March 22, 2020 and ending on December 19, 2020. For those weeks, the Claimant is allowed Pandemic Unemployment Assistance benefits.

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.

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Ashley R. Koopmans

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James M. Strohman

**DISSENTING OPINION OF MYRON R. LINN:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Myron R. Linn

RRA/fnv