

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

MARK D WOLFE

Claimant

and

INFAS TECH DECORAH LLC

Employer

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HEARING NUMBER: 21B-UI-01693

**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: 96.4-3, 96.19-38

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**.

Regular Unemployment Benefits: The able and available requirements are so fundamental to the unemployment system that under section 303(a)(12) of the Social Security Act federal funds will not be released to a state unless that state's law requires that an individual is able to work, available to work, and actively seeking work as a condition of eligibility for regular UC for any week. 42 U.S.C. 503(a)(12) ("A requirement that, as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work.") Even during the Pandemic, the federal Department of Labor instructs that states **must continue to apply** the ability and availability requirements as set forth in their laws, or else run afoul of federal requirements. UIPL 23-20, p. 5-6 (DOLETA 5/11/20)(emphasis added); *see also* Iowa Code §17A.9A(1) ("In addition, this section does not authorize an agency to waive or vary any requirement created or duty imposed by statute.")

Fundamentally, the able and available requirements cannot be circumvented because a lot of people find themselves physically unable to be at work, or because a claimant is unhappy about the unavailability. The fact is, it is always true that a lot of people find themselves unable to work for a period of time and yet benefits are denied during that period. The classic example is pregnant women placed on restrictions. Under the regulations of the Department “[a] pregnant individual must meet the same criteria for determining ableness as do all other individuals.” 871 IAC 24.22(1). Under 96.5(1)(d) a worker who leaves work due to “pregnancy upon the advice of a licensed and practicing physician” may receive benefits but only once he is fully recovered and has his offer of reemployment rejected. Iowa Code §96.5(1)(d); *Hedges v. Iowa Dep’t of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); 871 IAC 24.25(35). The sympathetic nature of the reasons for limiting one’s availability does not change the fact that one is unavailable.

Furthermore, either one is available for work, or one is not. The fact that you are unhappy about being unavailable doesn’t change the fact that you *are* unavailable. The law is clear: “An individual who is ill and presently not able to perform work due to illness” is not available for work. 871 IAC 24.23(6); *see also Geiken v. Lutheran Home for the Aged*, 468 NW 2d 223, 226 (Iowa 1991). Also benefits are not allowed “[i]f an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.” 871 IAC 24.23(6). In short, “the Employment Security Law is not designed to provide health and disability insurance...” *White v. EAB*, 487 N.W.2d 342, 345 (Iowa 1992).

Although we have denied regular benefits we write further to give important information to the Claimant about the effect of our decision.

Pandemic Unemployment Assistance:

We point out to the Claimant that although the Claimant is denied benefits under state unemployment law, **this does not bar receipt of certain special pandemic related benefits**. In fact, being ineligible from state unemployment benefits is a prerequisite to some of these benefits. Of particular interest to the Claimant is 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).

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.**

Notably today we have made a decision that denies regular unemployment, but allows regular benefits once the Claimant offers to return to work, but is rejected. 871 IAC 24.22(2)(j)(1) ('If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.'). This means if the Claimant can get PUA the Claimant would receive the PUA benefit so long as the Claimant is unavailable because on a leave of absence for COVID reasons.

Should the Claimant wish to apply for PUA, the information on how to do so is found at:

<https://www.iowaworkforcedevelopment.gov/pua-information>.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv