

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GRANT M DAY
Claimant

APPEAL NO. 21A-DUA-01521-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (4R)

PL 116-136 Section 2102 – Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

The claimant, Grant Day, filed a timely appeal from the May 4, 2021 Assessment for PUA Benefits decision that denied Pandemic Unemployment Assistance (PUA) benefits, based on the deputy's conclusion that the claimant did not meet the eligibility requirements. After due notice was issued, a hearing was held on July 21, 2021. Claimant participated personally and was represented by his father, Mike Day. Grant Day, Cindy Day and Mike Day provided testimony. Exhibit A through E were received into evidence.

The administrative law judge took official notice of Agency administrative records pertaining to the claimant's claim for benefits, including DBRO, KCCO, KPYX, WAGE-A, NMRO, the monetary record, the application for PUA benefits, the Assessment for PUA Eligibility, the deputy's notes regarding the denial of PUA, the January 22, 2021 (reference 01) decision, and the administrative law judge decision in Appeal Number 21A-UI-04061-SN-T.

ISSUE:

Is the claimant eligible for PUA?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Grant Day, is a young man who has autism. Mr. Day's parents, Cindy Day and Mike Day, are Mr. Day's legal guardians.

The claimant established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development deemed the claimant "monetarily eligible" for regular benefits and set the weekly benefit amount at \$73.00. The claimant received regular benefits for the period of March 22, 2020 through the week that ended September 5, 2020, when he exhausted regular benefits. The claimant then received Pandemic Emergency Unemployment Compensation (PEUC) for 11 weeks between September 6, 2020 and November 21, 2020, when he exhausted PEUC benefits. The claimant also received \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) benefits for the period of March 29, 2020 through

July 25, 2020 and Lost Wages Assistance Payments (LWAP) for the period of July 26, 2020 through September 5, 2020.

The claimant's 2019, 2020, and 2021 quarterly wages were as follows:

EMPLOYER	ACCT-LOC	2019/1	2019/2	2019/3	2019/4
A K C, LLC	271836-000	1084	1148	1679	1238

EMPLOYER	ACCT-LOC	2020/1	2020/2	2020/3	2020/4
A K C, LLC	271836-000	1179			201

EMPLOYER	ACCT-LOC	2021/1	2021/2	2021/3	
A K C, LLC	271836-000	2274	1705	1245	
DUBUQUE BLUE LLC	649583-000			1642	

On January 22, 2021, an Iowa Workforce Development Benefits Bureau deputy entered a reference 01 decision that denied benefits effective May 3, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily off work, and not available for work. The claimant's parents/guardians filed a timely appeal from the decision. On April 7, 2021, an administrative law judge entered a decision in Appeal Number 21A-UI-04061-SN-T that affirmed the denial of benefits effective May 3, 2020 and the determination that the claimant did not meet the able and available requirements effective May 3, 2020. The claimant did not appeal the administrative law judge decision and the administrative law judge decision became final.

The claimant commenced part-time employment with AKC, L.L.C., doing business as Culver's Frozen Custard, in 2017 and continued to perform work as a part-time restaurant crew member until March 11, 2020. The claimant's usual duties consisted of delivering food to customers in the dining room and drive through, cleaning tables in the dining room, and restocking condiments and other items in the dining room. Manager Kelly Schuler was the claimant's supervisor. Bruce Kroll is the business owner. The claimant's two brothers also worked as restaurant crew members for the same employer.

The claimant went off work effective March 12, 2020, in connection with his mother/guardian's decision to remove him from his usual dining room work duties out of concern that the claimant might be exposed to COVID-19. Ms. Day was concerned that the claimant's disability-based habit of touching his face would lead to the claimant contracting COVID-19 from the dining room area of the employer's restaurant. The claimant usually wore gloves while performing his work duties, but this would not prevent the claimant from touching his face with gloved hand. Ms. Day was concerned that the employer continued its full business operations without restricting customer access, without having staff wear masks, and without taking any other precautions against the spread of COVID-19 in the context of the COVID-19 pandemic.

On March 12, 2020, Cindy Day sent an email message to the employer. The subject line stated, "Grant is NOT to work in the dining room. He is to only run orders for the drive thru." Ms. Day stated as follows in the body of her message:

Grant is NOT to work in the dinning [sic] room. He is to only run orders for the DRIVE THRU.

Grant has asthma. I am taking this CORONAVIRUS seriously. It is 10 times more deadly than the flu. It could be in Dubuque right now and we wouldn't even know it. So many people travel on planes, to foreign countries, or cruise ships.

Many people are transmitting it at church. My 3 sons all work Sunday mornings when customers come straight from church. I do NOT want Grant in the dining [sic] room at all, even to deliver.

Also, Brian is to only work drive thru taking orders & Andrew can run orders to drive thru like Grant, or take orders at the front. I do Not want them taking credit cards at the drive thru. People are to stay 6 feet apart to avoid coughing & sneezing from others. Please have the schedule reflect our new family guidelines & tell /forward this to Lexi.

Did Culvers buy any masks (N95) for their employees to wear for protection from contracting CORONAVIRUS? This will have to happen or maybe Culver's might have to become drive thru only, with no customers in the dining room or entering the building. Have a long term plan. Sorry, but I need to keep my 3 sons safe.
Many thanks.
Cindy Day

On March 14, 2020, Bruce Kroll, the business owner, sent an email response to Ms. Day. Mr. Kroll wrote as follows:

Cindy,

I can assure you that we are taking all precautions in helping of elimination of the virus. With this in mind, any team members that may be more at risk to effects of the virus should not work. This is one of the many precautions we are taking. I think in the boy's [sic] best interest, they should not return to work until the risk of the virus is gone. If you feel you need further information from me, feel free to give me a call.

Bruce Kroll – owner
Culver's Frozen Custard
[phone number omitted by administrative law judge]

The claimant went off work a few days before Governor Reynolds issued the March 17, 2021 Public Health Disaster Emergency proclamation in which the Governor directed restaurants to discontinue dine-in service. The employer continued to offer dine-in service until March 22, 2021, but then closed its dining room. The employer continued to operate its drive-through window.

On or about April 23, 2020, the claimant's brother spoke with a coworker who advised that employer was now requiring employees to wear masks. Ms. Day had earlier secured a mask with a filter for the claimant.

On April 23, 2020, Ms. Day wrote an email message to Ms. Schuler. Ms. Day wrote:

Hi Kelly,

Our three sons (Grant, Brian & Andrew) have waited patiently for life to return to normal, so they can return to work at Culvers.
Are you having your employees wear masks yet? Our sons all have a mask with a filter. Have any of your staff been sick?

Can they work 6 feet a part [sic]?

We were disappointed to learn that Grant & Brian did not get any stimulus money from the federal government because of their ages. We would like to try filing for unemployment for the boys, but they need to be considered "laid off/furloughed.["]

We drove by Culver's yesterday at supper time and saw that there were 8 cars in the drive through and only 7 employee cars. Brian said you had to cut your number of employees way down with the closure of the dinning [sic] room and use of the other registers.

Have you officially furloughed any employees?

Or, have you just reduced everyone's hours?

The boys need some kind of income since the federal government left them out.

We saw on Culer's [sic] online that the Dubuque store is looking to hire more team members. We hope our three boys['] jobs are not in jeopardy. They still very much want to be Culver's employees.

We are taking Covid 19 very seriously. Dubuque number have been okay so far. However, I am worried about our sons getting the virus somehow & bringing it home to me, since I have had scarring in my left lung from a previous case of pneumonia when Andrew was a baby.

Please advise as soon as possible.

Many thanks.

The Day Family

Ms. Day does not think she received an employer response to the April 23, 2020 email message.

The Day family subsequently received three letters from the employer, one for each member of the family who worked at the Culver's restaurant. The form letter sent to the claimant and his parents/guardians stated the restaurant would be opening in the near future and that the employer was making an offer for the claimant to return to work at that time to the same position he previously held. The letter asked that the employee indicate whether the employee wished to return or wished to remain off work. The letter requested that the written response be returned by May 2, 2020. Cindy Day submitted the response to the employer and indicated that the claimant was electing to remain off work at that time. Ms. Day told the employer that the claimant would be remaining off work and applying for unemployment insurance benefits in light of his asthma. In making the decision, the Days did not consult a doctor, but instead considered news media and a city health official's recommendation that Ms. Day order N95 masks for the claimant. The Day's other two sons returned to their employment in May 2021. By that time, the restaurant had implemented a social distancing and enhanced sanitation protocol in connection with reopening the dining room.

Cindy Day subsequently contacted the employer to request that the employer recommence taking employee temperatures and commence taking customer temperatures before allowing customers to enter the restaurant. Ms. Day also requested that the employer require customers to wear masks when they were not eating.

On May 18, 2020, Mr. Kroll responded with the following email message:

Cindy,

I understand your concern. My number one goal is the safety of the crew and our guests. We could reopen our dining rooms today, but I'm not comfortable with doing that yet. The intention of the letter is not to require them to return to work, rather their intentions in the future. We have to report certain information to the government including the number of employees. This letter is to get a count of team members that plan on returning to work in the future and those who are not returning.

We have discussed a lot of different ideas for opening up further. This week we are leaving it drive thru only. We may consider the next move to allow to go orders that can be done from the inside of the restaurant. Right now, with things changing so rapidly, I'm in a holding pattern until we get more information.

Please return the letters when you can. We will not eliminate anyone's [sic] employment if they are not comfortable working yet. The increase of \$2.00 to the hourly rate is not a raise. This was more of a thank you for working during these difficult times. The \$2.00 wage adjustment will run through the pay period ending May 31st.

Thanks for your input.

Bruce Kroll
Culver's of Dubuque

Ms. Day followed up with a message to the employer on May 18, 2020, as follows:

Hi Bruce,

So, will you be requiring customers to wear masks?
Will you be taking temperatures of customers?
Will you be taking temperatures of employees at the start of their shift?

Answers to these questions will decide how our 3 sons will respond moving forward.

More picnic tables outside would be better than inside dining [sic], fresh air.
We will await your responses before filling out the letters of Intent.

Many thanks,
Cindy Day

The employer provided a brief further response on May 18, 2020.

We haven't made all those decisions yet. I know we will be doing an employee illness screening that may include taking temps. We won't be taking customer temperatures. Not sure on masks for customers. We still have to follow the 6 foot rule for tables outside. Can't even use all tables currently in place. You can leave the date portion blank for return to work. Be we will need the letters back asap.

The next contact between the parties occurred on June 24, 2020, when Ms. Day sent the following message:

Kelly & Bruce,

Bad week to open up dining room with Covid 19 rates rising everywhere. I don't feel comfortable having Grant's two brothers working since customers are entering the building without wearing masks and not taking temperatures of anyone, not even the employees.

Especially when last Saturday an employee came to work with a fever. The national news just said a 17-year-old has died.

Our family just learned the results of our Covid test we took Monday, negative, thank goodness. We want to keep it that way. We will sign up to take the test one more time before it leaves Dubuque. According to our sons' dentist who is on the County Board of Health, "People are most contagious before showing symptoms." Some people don't ever show symptoms, but can still transmit Covid to others.

I think some customers will think twice now that you have opened up your dining [sic] room. Are other fast food restaurants opening their dining [sic] rooms? Our Covid numbers in Dubuque are very likely to rise over the next couple of weeks with more testing results.

The scientists/doctors say Covid rates are rising because people are not wearing masks inside or social distancing outside. They say it is mostly due to opening bars and restaurants. Young adults are the ones getting sick. We should be playing it safe. Error in the side of caution. Culver's had a good plan in place with 2 outside registers.

Please consider:

- taking temperatures of employees again. Our son, Andrew, would prefer it if you did.
- take temperatures of customers outside, before letting them in the building.
- require customers to wear masks before & after eating so they don't spread germs.
- take temps of customers & have them wear masks before coming inside to place orders
TO GO.

Our Family will be studying the situation in order to make a good & safe decision.

Many thanks.
Cindy Day

Ms. Schuler provided a brief response on June 29, 2020:

Hello, we are constantly changing operations to meet with all the guidelines. We look at all operations from a daily basis and I am sure there will be more changes in the future to make sure we are staying safe as possible. If the boys want to take a break at anytime [sic] because you don't feel comfortable with the dining room being open that is not an issue.

Kelly

On July 2, 2020, one of the claimant's brothers, Brian Day, tested positive for COVID-19. Cindy Day attributes the illness to working in the restaurant's kitchen. The claimant's sibling quarantined in his room for 10 to 14 days. Cindy Day decided to have the other brother, Andrew Day, who had returned to work stay off work. An Iowa Department of Public Health

representative advised Ms. Day that Brian Day would need to quarantine for 10 days and that the rest of the family would need to quarantine or 14 days after that.

On July 8, 2020, Ms. Day sent the following message to the employer:

Hi Bruce,

Brian is feeling better. He has been in isolation with meals brought to him & wearing an N 95 mask with a Hepa filter air purifier running in his room. He has lost a few pounds by not eating his usual Culver's food. Friday & Saturday he lost his sense of taste & smell with a raised temperature that peaked Sunday at 100.2 degrees.

Our family tried to get tested at Acute Care in Dubuque, but they turned us away because we did not have symptoms. We went to Test Iowa at 4:45 p.m. Monday. Our results came back last night, all negative. Thank goodness. We must have detected Brian's positive...before he spread it around too much, we hope.

We are still wearing masks in our home. With our family quarantining for two weeks, his dad brought home all of his equipment to work at home. We just registered to get tested one more time for tomorrow morning. Once we get those results...[remainder of message is illegible].

Mr. Kroll replied on July 8, 2020:

Cindy,

That's good news. With the increase in Dbq County we have closed the dining room back down until further notice. So many tough decisions that we have to make and you can't count on the media to give a true picture of what is going on. Let us know as things develop, and I will do the same.

Stay Well,
Bruce Kroll

Ms. Day sent an additional message to the employer on July 8, 2020:

Bruce,

Tough decision to close the dining [sic]. Uncertain times for sure. Fall-winter could get worse especially if they send all the kids back to school for indoor learning. The guy in the White House needs a reality check. Online learning is the way to go.

The younger people think they are invincible and are passing Covid to each other. Masks are necessary until the vaccine. The scary thing is you can test positive & pass it to others before showing symptoms.

We'll be in touch,
Cindy

On July 10, 2020, Mr. Kroll provided a brief response:

Cindy,

Let me know when the boy's Isolation is complete. If they are not comfortable working, I completely understand.

Bruce Kroll

Ms. Day sent the following to the employer on July 10, 2020:

Our family got tested again yesterday. Everyone has tested negative, although my results have not come in yet. I've been concerned since I have been working closely with Brian last Thursday afternoon/evening on his college schedule & plans. One more week off for sure. We'll get back to you after my results come in.

Thanks,
Cindy Day

The employer sent a follow up email on July 10, 2020:

Cindy,

Here's how I read from the Dept. of Health: Brian can come back to work 72 hours (or longer) after a negative test. The other boys would be 14 days from the last exposure. To me, since they are in the same household, that would be 14 days from Brian no longer having symptoms or having a negative test. So Brian would be fine to come back in a week like you suggested, but the others wouldn't be allowed until 14 days after Brian's symptoms went away. Do you agree?

Bruce Kroll

The claimant returned to the employment during the week of November 15, 2020, the same week the claimant exhausted PEUC benefits. The claimant's parents/guardians made a weekly claim for the week that ended November 21, 2020 and then discontinued the claim.

The claimant's parents have provided a photo of a Fluticasone seasonal allergy nasal spray prescribed to the claimant in November 2020 with instructions for daily use. The photo also includes a Ventolin HFA bronchodilator inhaler prescribed more recently for use "15 MIN BEFORE RUNNING," in other words, to prevent exercise-induced bronchial spasm.

On April 11, 2021, the claimant submitted his application for Pandemic Unemployment Assistance (PUA) benefits. The claimant's parents included the following statement:

My state unemployment benefits claim and appeal were denied, so I am applying for PUA. I did not work at Culver's from mid-March to mid-November 2020 because I have underlying conditions (including asthma) that put me at higher risk for COVID-19 complications. The restaurant did not initially have safety protocols in place and, for a couple of weeks in mid-summer, allowed customers inside the building. I did not feel that it was safe for me to return to work until the situation felt more under control.

In the PUA application, the claimant, or his parents, described the claimant's duties as, "Deliver food to customers, clean tables, restock condiments and other items." The claimant, or his parents, indicated the claimant worked nine hours per week during the school year and 15 hours per week in the summer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(4)(a) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

The claimant was "monetarily eligible" for regular unemployment insurance benefits funded by the State of Iowa, but the January 22, 2021, reference 01, decision disqualified him for those benefits. As a result, the claimant effectively exhausted regular benefits at the time he established the March 22, 2020 original claim.

Public Law 116-136, the CARES Act, at Section 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. Section 2012 provides Pandemic Unemployment Assistance PUA benefits to qualified individuals who were not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation. PL 116-136 Section 2102(a), (b) and (c), provide as follows:

SEC. 2102. PANDEMIC UNEMPLOYMENT ASSISTANCE.

(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—

(aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(bb) a member of the individual’s household has been diagnosed with COVID–19;

(cc) the individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID–19;

(dd) 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;

(ee) 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;

(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;

(gg) 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;

(hh) 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;

(ii) the individual has to quit his or her job as a direct result of COVID–19;

(jj) the individual’s place of employment is closed as a direct result of the COVID– 19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or

(II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (I); and

(B) does not include—

(i) an individual who has the ability to telework with pay; or

(ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

(b) ASSISTANCE FOR UNEMPLOYMENT AS A RESULT OF COVID– 19. —

Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

(c) APPLICABILITY. —

(1) IN GENERAL. — Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual — (A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID–19— (i) beginning on or after January 27, 2020; and (ii) ending on or before December 31, 2020; and (B) subject to subparagraph (A)(ii), as long as the covered individual’s unemployment, partial unemployment, or inability to work caused by COVID–19 continues.

(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 and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after the date of enactment of this Act, the duration of extended benefits is extended, the 39-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

The Continued Assistance Act (CAA) normally limits backdating PUA claims filed after December 27, 2020 to no earlier than December 1, 2020. Claimant’s PUA application was filed on April 11, 2021. However, if an individual filed a regular unemployment insurance benefits claim on or before December 27, 2020, and the State later determines that the individual is not eligible for regular unemployment insurance benefits, the State is to use the date the claimant filed the regular unemployment insurance benefits claim as the date of filing for the PUA claim. See UIPL No. 16-20 Change 4, Page I-19 dated January 8, 2021. Accordingly, the PUA application is to be deemed filed March 22, 2020.

There are a number of factors to be considered in determining the claimant’s eligibility for PUA benefits.

The claimant was never diagnosed with COVID-19 and never experienced symptoms of COVID-19.

The claimant’s brother, Brian Day, a household member, tested positive for COVID-19 on July 2, 2020. The Iowa Department of Public Health advised Brian Day to quarantine until July 12, 2020 and advise the other household members, including the claimant, to quarantine from July 12, 2020 through July 25, 2020. This situation would support eligibility for PUA benefits for the period of July 11, 2020 through the benefit week that ended July 24, 2020.

The claimant and his parents presented insufficient evidence to establish the claimant was at increased risk in connection with COVID-19. They presented insufficient evidence to establish that the claimant suffers from asthma beyond an exercise-induced condition. They provided no documentation from a medical professional. Instead, they provided a photo of a seasonal allergy nasal spray prescription and of an inhaler prescribed for use only when the claimant was about to engage in running. The claimant and his parents did not consult with a health care provider when making their own determination that the claimant was at increased risk or in deciding the claimant needed to go off work or remain off work.

The claimant commenced a voluntary leave of absence effective March 12, 2020. The employer did not layoff the claimant. The claimant’s temporary departure from the workplace was preceded by and prompted by Ms. Day’s March 12, 2020 email message to the employer in which she stated she did not want the claimant performing his usual dining room duties.

Subsequent correspondence between Ms. Day and the employer makes clear that all parties understood the claimant had not been laid off.

The employer closed its dining room to the public effective March 22, 2020. By that time, the claimant had already been off work for 10 days. The Governor's March 17, 2020 directive should have prompted the employer to close the dining room on March 17, 2020. The correspondence between the parties reflects that the employer reopened its dining room during the week of June 21, 2020.

There is no indication the claimant was available to return to work prior to the week of November 15, 2020. Rather, there are multiple communications wherein the claimant's mother/legal guardian reaffirms that the claimant would be delaying his return until the claimant's parents/legal guardians felt comfortable with the claimant returning to work.

The weight of the evidence establishes the employer had the claimant's usual dining room duties available to the claimant during the period of June 20, 2020 until the claimant return to the employment in mid-November 2020, but that the claimant was not available to perform the work.

The remaining question is whether the employer's operations created an unsafe work environment and placed the claimant at unreasonable risk of contracting COVID-19. Given the lack of preventative safeguards at the workplace at the time the claimant went off work, the administrative law judge would conclude the claimant left an unsafe work environment effective March 12, 2020. However, the weight of the evidence establishes the employer had taken reasonable steps to resolve the safety concerns and to comply with recommended guidelines by the time the employer reopened the week of June 20, 2020.

The claimant is eligible for PUA benefits for the benefit weeks between the March 22, 2020 original claim date and June 19, 2020 and for the two benefit weeks between July 4, 2020 and July 24, 2020. The claimant is not eligible for PUA benefits outside of these specific periods.

DECISION:

The May 4, 2021 Assessment for PUA decision that denied Pandemic Unemployment Assistance (PUA) benefits is modified in favor of the claimant/appellant as follows. The claimant is eligible for PUA benefits for the benefit weeks between the March 22, 2020 and June 19, 2020 and for the two benefit weeks between July 4, 2020 and July 24, 2020. The claimant not eligible for PUA benefits outside of these specific periods.

REMAND:

This matter is remanded to the Benefits Bureau for determination of the claimant's PUA weekly benefit amount for March 22, 2020 through June 19, 2020 and for July 4, 2020 through July 24, 2020.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

November 3, 2021
Decision Dated and Mailed

jet/scn