

State of Wisconsin



Labor and Industry Review Commission

Colleen M Koch
Claimant

Unemployment Insurance
Decision¹

Hearing No. 21603562MD

Dated and Mailed:

JAN 28 2022

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The commission **sets aside** the appeal tribunal decision and **remands** to the department to determine whether the claimant's documentation is sufficient for PUA eligibility.

By the Commission:

Handwritten signature of Michael H. Gillick in cursive.

Michael H. Gillick, Chairperson

Handwritten signature of Georgia E. Maxwell in cursive.

Georgia E. Maxwell, Commissioner

Handwritten signature of Marilyn Townsend in cursive.

Marilyn Townsend, Commissioner

¹ **Appeal Rights:** See the blue enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you must name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, all other parties in the caption of this decision or order (the boxed section above), and the Department of Workforce Development. Appeal rights and answers to frequently asked questions about appealing an unemployment insurance decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

Section 2102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, signed into law on March 27, 2020, created a new temporary federal program, Pandemic Unemployment Assistance (PUA). The program provides for the temporary payment of PUA to “covered individuals.”

This case is before the commission to consider the claimant’s eligibility for PUA benefits. An administrative law judge of the Unemployment Insurance Division of the Department of Workforce Development held a hearing and issued a decision, from which the claimant has filed a timely petition for commission review. The commission has considered the petition and the position of the claimant, and it has reviewed the evidence submitted at the hearing.

Findings of Fact and Conclusions of Law

The claimant filed an application for PUA benefits on February 13, 2021. The application informed the claimant that she must provide documentation substantiating her employment or self-employment, or planned commencement of employment or self-employment within 21 days or she would be denied PUA benefits. Based on the claimant's application date her documents were due to the department by March 6, 2021. Although the claimant read the instructions regarding filing the documents on her application, she failed to submit any documentation by the deadline believing that she had to wait for her application to be approved.

The application did not contain any notice to the claimant regarding the ability to show good cause on or before the deadline for extending her deadline.

Memorandum Opinion

The issue in this case is whether the claimant is eligible for PUA benefits.

PUA Eligibility in General

PUA eligibility is determined on a week-by-week basis. To be eligible for PUA in any particular week, all of the following requirements must be met for that week:

1. The claimant must not be eligible for regular unemployment compensation (UC), extended benefits (EB), or pandemic emergency unemployment compensation (PEUC). This includes an individual who has exhausted all rights to such benefits, as well as an individual who is self-employed, seeking part-time employment, lacking sufficient work history, or who is otherwise not qualified for regular UC, EB, or PEUC. Self-employed individuals include independent contractors and gig economy workers²; *and*

² Section 2102(a)(3)(A)(i) of the CARES Act.

2. The claimant must have experienced at least one of the COVID-related reasons identified at subparagraphs (aa) through (kk) of section 2102(a)(3)(A)(ii)(I) of the CARES Act; *and*
3. The claimant must be able to work and available for work under state law, except that the claimant is unable to work or unavailable for work due to the COVID-related reason.³

In addition, a claimant must provide required documentation substantiating employment or self-employment or the planned commencement of employment or self-employment.

PUA Eligibility in this Case

Section 241(a) of the CARES Act requires individuals to submitting PUA applications on or after January 31, 2021 (regardless of whether the claim is backdated), to submit documentation substantiating employment or self-employment or the planned commencement of employment or self-employment.⁴ This documentation must be submitted within 21 of filing the application or by the date the individual is directed to submit the documentation by the State Agency, whichever is later.⁵ If an individual fails to submit the documentation he or she will not be eligible for PUA benefits.⁶ The deadline may be extended if the individual has shown good cause under the State's unemployment law within the deadline to provide the documentation.⁷

States must notify individuals filing new PUA claims on or after January 31, 2021, and individuals filing PUA continued claims on or after December 27, 2020, of the requirement to provide the documentation.⁸ Such notice must include the ability to show good cause on or before the deadline for extending such deadline.⁹

In this case, the notice to provide documentation was listed on the application. However, the notice did not include the language regarding good cause. As a result, the notice on the application is insufficient. The commission reverses the appeal tribunal decision and remands to the department to extend the deadline to allow the claimant to submit the documentation and determine whether that documentation is sufficient for PUA eligibility.

³ Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

⁴ UIPL 16-20, Change 4, Attachment I, pp. 9-11.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *See* UIPL 16-20, Change 4, Attachment I, p 12, subsection (d), Notification Requirements.

⁹ *Id.*

If the claimant has not yet submitted her documentation to the department, she can submit it upon receipt of this decision. The claimant does not need to wait for a new notice to be sent out.