

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

GARY W TJERNAGEL
Claimant

APPEAL NO. 08A-DUA-00039-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL UNIT
ADMINISTRATIVE OFFICE

OC: 08/10/08 R: 01
Claimant: Appellant (2)

20 CFR 625.4 - Unemployment Caused by a Major Disaster

STATEMENT OF THE CASE:

The claimant appealed a Disaster Unemployment Assistance (DUA) decision dated August 12, 2008, that concluded the claimant was ineligible to receive DUA because the claimant was not unemployed as a result of a major disaster. A telephone hearing was held on October 9, 2008. The claimant participated in the hearing. Exhibits A-1 and A-3 were admitted into evidence at the hearing. Based on the evidence, the arguments of the claimant, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

ISSUE:

Is the claimant unemployed as a result of a major disaster?

FINDINGS OF FACT:

The claimant filed an application for DUA on August 12, 2008, with an effective date of May 25, 2008. The claimant is a self-employed farmer. He and his brother, as 50-50 partners, farm about 2300-acres of cropland in Hamilton County, Iowa, which was declared a major disaster area. He raises corn and soybeans on the farm. As of May 24 in a normal year, the claimant would be working an average of 40 to 50 hours per week spraying his crops.

Starting in late May 2008, disaster conditions in the form of heavy rains caused flooding on the claimant's farm and substantial damage to the crops. The disaster conditions caused over 40 percent of the crops to be lost completely or severely damaged. About 1000 acres were completely underwater due to flooding. Late in June, 600 acres were replanted, but the replanted crops and the crops that were flooded and were not replanted will be substantially affected in their yield and quality.

As of May 24, 2008, the claimant was not able to perform his customary full-time hours in self-employment due to the weather and soil conditions. He was not able to get into the fields at all until late June. The extent of the disaster has caused and will cause the claimant to work substantially less than his customary full-time hours throughout the crop season.

In addition to the claimant's income from farming, he also has a side self-employment business of selling crop seed. He receives a monthly check of \$1,600.00 from the seed company. He was advised to prorate the amount and report every week.

REASONING AND CONCLUSIONS OF LAW:

"The Robert T. Stafford Disaster Relief and Emergency Assistance Act" includes a program for the payment of unemployment assistance benefits to individuals unemployed as a result of a major disaster. See 42 USC §§ 5177, 5189a; 20 CFR Part 625. Under the pertinent part of the regulations, an individual is eligible to receive a payment of DUA for a week if the week is a "week of unemployment" that is caused by a major disaster. 20 CFR § 625.4(d) and (f).

For a self-employed individual, a "week of unemployment" is a week during which an individual is "totally, part-totally, or partially unemployed." An individual is "totally unemployed" in a week during which he performs no services in self-employment. "Partially unemployed" is defined as "a week during which the individual performs less than the customary full-time services in self-employment, as a direct result of the major disaster, and earns wages not exceeding the maximum earnings allowance prescribed by State law." 20 CFR § 625.2(w)(2).

The claimant suffered substantial damage to his crops that caused a substantial reduction in his customary farm work. The claimant has established that he is totally or partially unemployed due to the disaster. The claimant is eligible to receive DUA benefits as of the effective date of his claim and continuing until he is no longer unemployed due to the disaster, provided he is otherwise qualified.

The basis of the disqualification in this case was that the claimant was still receiving wages in excess of his weekly benefit amount of DUA and was still performing services in his seed business. This ignores 20 CFR § 625.7(f)(2), which states the weekly amount of DUA shall be reduced by the amount of income received from self-employment during the week it is received and income is defined as gross income. The claimant should also be reporting any hours he spends working in his seed corn business during the week the work is performed, but would be eligible for benefits as long as he was not working full time in that business.

The claimant is required to fill out new continued requests for Disaster Unemployment Assistance for the following four-weeks periods: (1) Week ending 5-31, 6-7, 6-14, 6-21; (2) Week ending 6-28, 7-5, 7-12, 7-19; and (3) Week ending 7-28, 8-2, 8-9, 8-16. On the forms, he needs to report the entire \$1,600.00 in the week he received the payment and an estimate of the hours spent in his seed business.

The claimant was also advised that he was applying for benefits for both he and his brother. This advice was inaccurate. Larry Tjernagel should file a claim immediately if he wishes to apply for DUA.

DECISION:

The DUA decision dated August 12, 2008, is reversed. The claimant is eligible to receive DUA benefits, provided he is otherwise qualified.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw