

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JULIE J BREITBARTH
Claimant

APPEAL NO. 20A-DUA-00900-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 06/14/20
Claimant: Appellant (1)

PL 116-136 Section 2102 – Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 21, 2020 decision that denied Pandemic Unemployment Assistance (PUA) benefits, based on the deputy's conclusion that the claimant was not unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified under section 2102(a)(3)(A)(ii)(I) of the CARES Act. After due notice was issued, a hearing was held on December 17, 2020. Ms. Breitbarth participated. Exhibit A was received into the hearing record. The administrative law judge took official notice of Agency administrative records pertaining to the claimant's claim for benefits, including KCCO, DBRO, WAGE-A, NMRO, the monetary record mailed on June 16, 2020, the September 30, 2020, reference 01, decision, the administrative law judge decision in Appeal Number 12535-S2-T, the application for PUA, the October 21, 2020 Assessment for PUA Eligibility, and the deputy's notes regarding the denial of PUA benefits.

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 established an original claim for benefits that was effective June 14, 2020. The applicable base period in connection with said claim consisted of four quarters of 2019. Throughout the base period, the claimant was employed by Security National Bank as a Financial Services Representative. In the monetary record mailed on June 16, 2020, Iowa Workforce Development determined that the claimant met the minimum earning requirements to be considered for regular unemployment insurance benefits and set a weekly benefit amount of \$423.00. The claimant has made weekly claims for the period of June 14, 2020 through December 12, 2020, but has received no regular benefits. A September 30, 2020, reference 01, decision disqualified the claimant for state unemployment insurance benefits, based on the deputy's conclusion that the claimant voluntarily quit her employment on June 12, 2020 for personal reasons and without good cause attributable to the employer. The claimant's husband underwent a bone marrow transplant in early March 2020 and is immune-compromised. Prior to her husband's transplant, the claimant worked full-time. The claimant was off work in

connection with her husband's transplant and recovery. The claimant returned to work toward the end of May 2020. The claimant elected to return on a part-time basis. The claimant's husband's doctor approved the claimant's return to work. The claimant voluntarily quit her employment on June 12, 2020 out of concern that she might be exposed to COVID-19 and might communicate the disease to her immune-compromised spouse. The claimant appealed the September 1, 2020 decision. In Appeal Number 12535-S2-T, an administrative law judge entered a default decision that dismissed the claimant's appeal, based on the claimant's failure to appear for the appeal hearing. The claimant did not appeal the administrative law judge's decision.

On October 1, 2020, the claimant applied for Pandemic Unemployment Assistance (PUA). The claimant asserted that she had quit her employment "as a direct result of COVID-19." The claimant further stated:

My husband had a bone marrow transplant on 3-3/2020 and has a compromised immune system, putting him at great risk for infections. His doctor repeated [sic] said contracting Covid could be fatal.

In her PUA application, the claimant identified her role at Security National Bank as Financial Service Representative and described her duties as follows: general teller work, opened new-accounts-checking, savings, CDs, debit cards, safe deposit boxes, ordered cash, maintained the vault, account maintenance, bank promotions."

The October 21, 2020 Assessment for PUA Eligibility denied benefits, based on the deputy's conclusion that the claimant was not unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified under section 2102(a)(3)(A)(ii)(I) of the CARES Act. The deputy determined that the claimant's quit to care for a spouse who might be at risk for COVID-19 did not qualify the claimant for PUA benefits.

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 was disqualified for state benefits, based on a disqualifying voluntary quit.

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

(ll) 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 (l); 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)(l).

(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.

In a series of Unemployment Insurance Program Letters (UIPLs), the United States Department of Labor has issued guidance regarding Pandemic Unemployment Compensation. That guidance includes the following:

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. Included for each of the categories are illustrative examples and explanations of circumstances that fall I-4 under each category. These examples and explanations for each of the categories are

not an exhaustive list of all COVID-19 related circumstances that may qualify an individual for PUA benefits, however, should other qualifying circumstances be used they must be identified and applied in a manner consistent with the examples below.

a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. Examples may include:

- An individual who has to quit his or her job as a direct result of COVID-19 because the individual has tested positive for the coronavirus or has been diagnosed with COVID-19 by a qualified medical professional, and continuing work activities, such as through telework, is not possible by virtue of such diagnosis or condition;
- An individual who has to quit his or her job due to coming in direct contact with someone who has tested positive for the coronavirus or has been diagnosed by a medical professional as having COVID-19, and, on the advice of a qualified medical health professional is required to resign from his or her position in order to quarantine.

...

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.

...

i) The individual has to quit his or her job as a direct result of COVID-19. For example:

- An individual was diagnosed with COVID-19 by a qualified medical professional, and although the individual no longer has COVID-19, the illness caused health complications that render the individual objectively unable to perform his or her essential job functions, with or without a reasonable accommodation.

[Emphasis added.] UIPL 16-20 (4/5/20), pages I-4 through I-6.

The United States Department of Labor has issued guidelines regarding Pandemic Unemployment Compensation in that includes the following:

41. Question: An example provided for section 2102(a)(3)(A)(ii)(I)(ff) of the CARES Act in UIPL No. 16-20 explains that an individual whose health care provider advises him or her to self-quarantine due to a compromised immune system by virtue of a serious health condition may be eligible for PUA. Are there other reasons that an individual may be eligible for PUA under this clause?

Answer: Yes. The examples in UIPL No. 16-20 are not intended to be exclusive or comprehensive. Regardless of the underlying reason for an individual's increased risk for COVID-19, section 2102(a)(3)(A)(ii)(I)(ff) of the CARES Act applies to all individuals who are advised by a health care provider to self-quarantine due to concerns related to COVID-19. Without having been advised by a health care provider to self-quarantine, an individual who does not go to work due to general concerns about exposure to COVID-

19, and who does not meet any of the other COVID-related criteria for PUA, is not eligible for PUA.

Emphasis added.] UIPL 16-20, Change 1 (4/27/20), pages I-10.

The claimant is not eligible for PUA benefits. Unfortunately, the claimant's circumstances do not fall within the eligibility parameters set forth section 2102(a)(3)(A)(ii)(I) of the CARES Act. If the claimant was herself immune-compromised and a doctor had advised her to self-quarantine, that would be different. If the claimant had quit her job because she was COVID-19 positive and a doctor advised her to leave the employment, that would be different. If the claimant's spouse had contracted COVID-19 and the claimant was off work to care for him, that would be different. However, the claimant's decision to quit the employment out of concern that she might be exposed to COVID-19 and might thereafter communicate the illness to her immune-compromised is something Congress could easily have included in section 2102(a)(3)(A)(ii)(I) of the CARES Act, but left out.

DECISION:

The October 21, 2020 Assessment for PUA Eligibility is affirmed. The claimant is not eligible for PUA benefits.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

December 31, 2020
Decision Dated and Mailed

jet/scn