

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**RODNEY C SHEFFIELD**  
Claimant

**APPEAL NO. 21A-DUA-01045-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
INVESTIGATIONS & RECOVERY UNIT**

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

PL 116-136 Section 2102 – Pandemic Unemployment Assistance  
Iowa Code Section 96.16(4) – Administrative Penalty - Misrepresentation

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 9, 2021 decision that denied Pandemic Unemployment Assistance (PUA) benefits, based on the investigator's conclusion that the claimant failed to substantiate that he had a business enterprise in Iowa. The decision cited Iowa Code section 96.16(4) (misrepresentation) and further held that a 15 percent penalty would be added to any Lost Wage Assistance Payments (LWAP) overpayment amount, if applicable. After due notice was issued, a hearing was held on April 21, 2021. The claimant participated personally and was represented by attorney Kevin Brown. Daniel Noonan, Investigator, Iowa Workforce Development Investigations & Recovery Unit participated. Claimant waived formal notice on the misrepresentation issue governed by Iowa Code section 96.16(4). Exhibits A through K and Agency Exhibits 1-1 through 5-3 were 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 DBRO, KCCO, KPYX and WAGE-A.

**ISSUES:**

Is the claimant eligible for PUA?

Is the claimant subject to a 15 percent penalty for misrepresenting material facts?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant attempted to establish an original claim that would have been effective March 22, 2020. Because the claimant had no base period wages, Iowa Workforce Development deemed the claimant not monetarily eligible for benefits. The claimant has had no insured employment since the fourth quarter of 2018, the earliest quarter of the relevant base period.

The claimant purports to have been self-employed as a construction contractor in 2019, but has no proof that he performed any work, generated any revenue, or was due any payment in 2019. Instead, the claimant provides an April 30, 2019 estimate for a concrete tear-out/replacement with no proof that he performed the work or received payment for the work. See Exhibit A. The

claimant provides June 16-17, 2019 email correspondence via craigslist.com wherein he requests the opportunity to bid on a driveway repair project and receives a response that the project is no longer available. See Exhibit B. The claimant provides July 4-5, 2019 email correspondence via craigslist.com wherein he requests to bid a farm fence project. See Exhibit C. The claimant performed no work on the farm fence project. The claimant provides September 27, 2019 email correspondence via craigslist.com where he requests to bid a sidewalk project and receives a response that the project is no longer available. See Exhibit D. The claimant asserts that he generated \$5,000.00 to \$7,000.00 in gross revenue and generated a net profit of less than \$2,000.00. However, the claimant offers no 1099 tax form, no 2019 tax return, and no schedule C Profit or Loss for Business to substantiate his assertion. The claimant's assertion that his business was a bona fide going concern in 2019 is dubious.

The claimant provides limited evidence of bona fide self-employment in 2020. The claimant provides email correspondence and payment records regarding a single project, driveway work he performed for one Maridith Morris in May and June 2020. The project generated \$7,320.00 in gross revenue. See Exhibits E, F and J. However, the claimant asserts he actually lost \$1,000.00 on Ms. Morris' project due to a need to correct work. The claimant asserts he performed work on another driveway surfacing project around Halloween that generated a net profit of \$200.00 to \$250.00. The claimant provides correspondence with prospective lending entities, which correspondence documents fruitless pursuits of funding. See Exhibits G, H and I.

The claimant advises that he was homeless for much of 2020. At times, the claimant temporarily resided with his father, with friends, or at a homeless shelter.

The claimant asserts, without offering any proof, that he thinks he had COVID-19 in 2020. The claimant advises that he was diagnosed with influenza A and B. The claimant asserts, without offering any proof, that his roommate was diagnosed with COVID-19 sometime between February 12 and 16, 2020.

On September 17, 2020, the claimant submitted his first application for Pandemic Unemployment Assistance (PUA). The claimant indicated in his application for PUA that he was a self-employed construction worker and that the name of his business was Dsm createlove. The claimant falsely categorized himself as someone whose household member had been diagnosed with COVID-19. The claimant further falsely stated: "I am a restaurant worker and cannot find work due to reduced everything pertaining to covid 19." He made the additional false assertion that prior to COVID-19, he had worked 55 hours per week on average. The claimant attached a 2014 resume to his application.

As of September 17, 2020, the claimant had not made any weekly claims. On October 7, 2020, the claimant made a weekly claim for each of the weeks between March 22, 2020 and October 3, 2020. The claimant thereafter continued to make weekly claims through the benefit week that ended January 30, 2021.

On January 19, 2021, the claimant submitted a second application for PUA benefits. The claimant indicated in this second application that he was a self-employed construction worker and had last performed work on September 11, 2020. The claimant categorized himself as someone whose place of employment was closed as a direct result of the COVID-19 public health emergency. The claimant further stated: "I'm a seasonal concrete finisher. I am also self employed [sic] gig worker and there just aren't jobs like there was before covid19."

The claimant made the false assertion that prior to COVID-19, he had worked 38 hours per week on average. The claimant attached a digital wallet record that reflected the 2020 payments received from Maridith Morris and other non-work related transactions.

On January 26, 2021, an Iowa Workforce Development Benefits Bureau deputy generated an Assessment for PUA Benefits decision that held the claimant was eligible to receive \$203.00 in weekly PUA benefits effective March 22, 2020. The deputy erroneously assigned quarterly wages to the PUA base period quarters. Though the PUA base period quarters were supposed to reflect the claimant's income during the four quarters of 2019, the deputy erroneously used the 2020 digital wallet records and assigned those 2020 payments to the four PUA base period quarters.

On January 26, 2021, Iowa Workforce Development mailed the Assessment for PUA Benefits to the claimant. IWD thereafter placed \$22,007.00 in benefits on a debit card assigned to the claimant. The benefits placed on the card included \$8,807.00 in PUA benefits, \$11,400.00 in FPUC benefits and \$1,800.00 in LWAP benefits.

On February 1, 2021, Iowa Workforce Development Investigations & Recovery Unit received a tip wherein the person providing the tip asserted that the claimant was filing for PUA benefits under false pretenses. On February 1, 2020, the investigator sent written notice to the claimant regarding an interview to occur on February 9, 2021. The investigator requested that the claimant provide a number of specific items to assist with verifying the existence of a bona fide business and the legitimacy of his PUA claim. The list of requested items included financial records for 2019, and Iowa Department of Revenue Sales Tax Withholding Permit, a list of vendors and/or customers with whom the claimant did business during 2019, verification/proof of State of Iowa Sales Tax Withholdings, and verification of contractor registration with the Iowa Department of labor. The claimant did not provide any of the requested items.

On February 9, 2021, IWD Investigator Daniel Noonan interviewed the claimant regarding his PUA application. The claimant advised that he had not performed any work as a concrete finisher in 2020, had not registered with the Iowa Department of Labor as a contractor, and lacked authorization to withhold sales tax. The investigator concluded that the claimant failed to substantiate the existence of a bona fide business. The investigator notified the claimant that his application for PUA benefits would be denied. On February 9, 2021, Iowa Workforce Development mailed the Assessment for PUA benefits from which the claimant appeals in the present matter.

IWD cancelled the \$22,007.00 in benefits that had been credited to the debit card assigned to the claimant and did so before the claimant had a chance to access and use the benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

The claimant asserts that the investigator, and by extension the Agency, acted in an extrajudicial manner when the investigator, through the February 9, 2021 decision, effectively reversed the January 26, 2021 decision that allowed PUA benefits to the claimant. However, the Benefits Bureau has authority to affirm, modify, or reverse a prior Benefits Bureau decision based on facts it has in its possession or facts it acquires. See Iowa Admin. Code section 871-24.19(3). The investigator was in this matter an agent of the Benefits Bureau. There was nothing irregular or extrajudicial involved in the Agency's response to a tip concerning potential unemployment insurance fraud.

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 is not monetarily eligible for regular unemployment insurance benefits funded by the State of Iowa because the claimant lacks qualified earnings in his base period.

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 United States Department of Labor (USDOL) has provided guidance for interpreting and applying Section 2102 through a series of Unemployment Insurance Program Letters (UIPLs). Such guidance is helpful when a particular claimant does not on the surface fit neatly within one of the “covered individual” categories referenced above. Through the UIPLs referenced below, the USDOL introduced the notion of eligibility for PUA based on “significant diminution of work as a result of COVID-19” and tied this to Section 2102(a)(3)(A)(ii)(I)(kk), regarding “additional criteria established by the Secretary for unemployment assistance under this section.”

UIPL 16-20 (4/5/20), p. I-6, provides as follows:

k) The individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

- The Secretary has determined that, in addition to individuals who qualify for benefits under the other criteria described above, an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities. For example, a driver for a ridesharing service who receives an IRS Form 1099 from the ride sharing service may not be eligible for PUA benefits under the other criteria outlined above, because such an individual does not have a “place of employment,” and thus cannot claim that he or she is unable to work because his or her place of employment has closed. However, under the additional eligibility criterion established by the Secretary here, the driver may still qualify for PUA benefits if he or she has been forced to suspend operations as a direct result of the COVID19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations unsustainable.

UIPL 16-20, Change 1 (4/27/20), p. I-11, provides as follows:

42. Question: UIPL No. 16-20 provides an example of a driver for a ridesharing service who is forced to significantly limit his or her performance of customary work activities because of the COVID-19 public health emergency, such as if a state or municipal order restricting movement makes continued operations unsustainable, indicating that he or she may be eligible for PUA under section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. Does this apply to other types of independent contractors?

Answer: Yes. An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of one of

the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act. This includes an independent contractor who experiences a significant diminution of work as a result of COVID-19.

UIPL 16-20, Change 2 (7/21/20), p. I-4, provides as follows:

10. Question: Is a self-employed child care provider who is providing child care for fewer children as a result of the COVID-19 pandemic eligible for PUA?

Answer: If the self-employed child care provider can establish that he or she has experienced a significant diminution of his or her customary full-time services because of COVID-19, he or she may be eligible for PUA under the additional eligibility criterion established by the Secretary pursuant to Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. This individual's benefit amount may be reduced because of income from continued partial employment.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The claimant is not eligible for PUA benefits. The claimant is not a credible witness. The claimant intentionally made multiple false statements in his applications for PUA benefits. The claimant intentionally made additional false statements at the appeal hearing. The claimant presented insufficient evidence to prove that he generated any income from self-employment, or from employment, in 2019. The claimant presented insufficient evidence to prove a significant diminution of work directly resulting from the COVID-19 pandemic. Indeed, the evidence presented by the claimant indicates a year-over-year increase in gross revenue in 2020. The claimant does not otherwise fit into any of the eligibility categories set forth at section 2102(a)(3)(A)(ii)(I) of the CARES Act. PUA benefits are denied.

Iowa Code section 96.16(4)(a) and (b) provides:

Misrepresentation.

a. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in

favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

b. The department shall assess a penalty equal to fifteen percent of the amount of a fraudulent overpayment. The penalty shall be collected in the same manner as the overpayment. The penalty shall be added to the amount of any lien filed pursuant to paragraph "a" and shall not be deducted from any future benefits payable to the individual under this chapter. Funds received for overpayment penalties shall be deposited in the unemployment trust fund.

There is no doubt that the claimant engaged in fraud in connection with his applications for PUA benefits. However, because the Agency cancelled the benefits before the claimant had access to the benefits, the claimant cannot be deemed to have received the benefits. There has been no overpayment of benefits and therefor no 15 percent penalty may be assessed.

**DECISION:**

The February 9, 2021 decision that denied Pandemic Unemployment Assistance (PUA) benefits is modified in favor of the claimant/appellant as follows. The claimant is not eligible for PUA benefits. The claimant's request for PUA benefits is denied. The claimant engaged in fraud in connection with his applications for PUA benefits. However, because the Agency cancelled the benefits, there was no overpayment and, therefore, no 15 percent penalty applies.



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James E. Timberland  
Administrative Law Judge

June 9, 2021  
Decision Dated and Mailed

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