

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS V MERSCH
Claimant

APPEAL NO. 10A-DUA-00010-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL UNIT
ADMINISTRATIVE OFFICE

**Disaster Effective Date: 06/06/10
Declaration #: 1930
Claimant: Appellant (1)**

20 CFR 625.4 - Unemployment Caused by a Major Disaster
20 CFR 625.2(t) - Principal Source of Income and Livelihood

STATEMENT OF THE CASE:

The claimant appealed a Disaster Unemployment Assistance (DUA) decision dated September 22, 2010, 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 November 3, 2010. The claimant participated in the hearing. Exhibits A-1 and A-2 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 September 3, 2010, with an effective date of June 6, 2010. The claimant farms a 3500-acre farm in Wright and Humboldt County, Iowa, which was declared a major disaster area. The claimant assists with all the fieldwork on the farm.

Starting in June 2010, disaster conditions in the form of heavy rains caused flooding on the claimant's farm and damage to the crops. The disaster conditions caused over 50 percent of the claimant's crops to be lost completely or severely damaged.

In 2009 the claimant reported farm income and expenses on a form 4835, entitled "Farm Rental Income and Expenses" and not on a Schedule F. This is the tax form used to report "Crop and Livestock Shares Received by a Landlord (or Sub-Lessor) and is identified as "Income not Subject to Self-employment Tax." The claimant reported gross farm rental income of \$213,202 and expenses of \$214,628, for a net farm rental loss of \$1,426. He also reported \$715 in interest income and \$4,800 in dividend income. The claimant received \$17,453 in Social Security retirement benefits. None of the claimant's income was reported as self-employment, and no self-employment tax was paid on any of the income.

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, a person must be an "unemployed self-employed individual" to receive benefits. 20 CFR § 625.4(d) and (f).

An "unemployed self-employed individual" means an individual who was self-employed in or was to commence self-employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual's performance of service in self-employment, and whose unemployment is caused by a major disaster. 20 CFR § 625.2(t). A "self-employed individual" means an individual whose primary reliance for income is on the performance of services in the individual's own business or on the individual's own farm. 20 CFR § 625.2(n).

I conclude the claimant's principal source of income and livelihood is not dependent upon performing services in farming. None of the claimant's income is reported as self-employment. Instead, the money is reported as rental income and crop share income not due to his performing services but for the use of his land. His other income is from Social Security benefits, interest income, and dividends. When persons submit tax forms to the IRS they declare under penalties of perjury that the information contained on those forms is true, correct, and complete. I must rely on the tax forms submitted by the claimant to show whether he should be considered self-employed or not. For the claimant to be treated as a self-employed individual for this federal program, he would be required to amend his federal tax form to show he is self-employed.

DECISION:

The DUA decision dated September 22, 2010, is affirmed. The claimant is ineligible to receive DUA benefits.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs