

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE L EVERHARD
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-DUA-00147-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (4)

PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance

STATEMENT OF THE CASE:

Jamie L Everhard, the claimant/appellant, filed an appeal the Iowa Workforce Development decision dated December 5, 2020 that determined she was not eligible for Pandemic Unemployment Assistance (PUA) benefits. Ms. Everhard was properly notified of the hearing. A telephone hearing was held on February 6, 2021, at 10:00 a.m. Ms. Everhard participated and testified. Claimant's Exhibit A was admitted into evidence. Official notice was taken of the administrative record.

ISSUE:

Is Ms. Everhard eligible for Pandemic Unemployment Assistance benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Everhard worked both as an employee and as a self-employed person in 2020. She worked Eventlink, LLC as a part-time marketing manager. She began that job in 2011. She also worked at US Concepts as a part-time, on-call promotional model/brand ambassador. She began working that job in 2009. Ms. Everhard also worked as a self-employed marketing manager. Her business is a sole-proprietorship. She has been self-employed since 2015. She does paperwork at her home office but does most of her work in-person at events. The majority of Ms. Everhard's work is at in-person events.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. The division of Eventlink, LLC that Ms. Everhard worked for closed in March 2020 due to the pandemic. Since March, Ms. Everhard has worked one event for Eventlink, LLC in November 2020. US Concept's business slowed significantly due to the pandemic. Ms. Everhard has not been called for work with this employer since March 2020.

Ms. Everhard has had many jobs scheduled to begin that were cancelled due to COVID-19. Examples include the Iowa State Fair, the Iowa Auto Show, Iowa State University football events and Iowa Cubs events.

Ms. Everhard is the parent of a toddler. Family provides childcare so Ms. Everhard does not need childcare in order to attend work.

Ms. Everhard has not had symptoms of Covid-19. No one in Ms. Everhard's household has been diagnosed with Covid-19. Ms. Everhard has not been advised by a medical professional to quarantine due to Covid-19.

Ms. Everhard received \$11,324.83 in regular unemployment insurance (UI) benefits for 23 weeks from March 15, 2020 through August 22, 2020. Ms. Everhard received \$6,500.000 in Pandemic Unemployment Compensation (PEUC) benefits for 13 weeks from August 23, 2020 through November 21, 2020. Ms. Everhard received \$10,300.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for 22 weeks from April 5, 2020 through September 5, 2020. As of November 21, 2020, Ms. Everhard had exhausted her eligible for regular UI and PEUC benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, Sec. 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.

The issue to be determined here is whether claimant is a "covered individual" who is eligible to receive benefits within the meaning of applicable law.

Section 2102 of the CARES Act describes a covered individual as follows:

(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).

Ms. Everhard was eligible for regular UI benefits and PEUC benefits from March 15, 2020 through November 21, 2020. Therefore, Ms. Everhard is not eligible for PUA benefits during this time period.

The United States Code authorizes the Secretary of the United States Department of Labor to enter into agreements with states to administer Pandemic Unemployment Assistance (PUA) benefits under the CARES Act. PL 116-136, Sec. 2102(f). The United States Department of Labor has issued operating instructions to states in implementing section 2102 of the CARES Act. Iowa Code § 96.11 mandates that Iowa Workforce Development “shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter. . .” When implementing section 2102, the operating instructions direct states to first consult section 2102 of the CARES Act and then the operating instructions. When both are silent, states should refer to section 625 of title 20, Code of Federal Regulations. When consulting the regulations, the term “COVID-19 public health emergency” is to be substituted for the term “major disaster” and the term “pandemic is to be substituted for the term “disaster.”

In the Department of Labor’s Unemployment Insurance Program Letter No. 16-20, Change 2, it states

b. Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16-20, Change 1, explains that an independent contractor who experiences a “significant diminution of work as a result of COVID-19” may be eligible for PUA.

With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

In this case, Ms. Everhard experienced a significant diminution of services because of the COVID-19 pandemic health emergency and is therefore eligible for PUA benefits under subsection (kk) effective November 22, 2020. Ms. Everhard must make weekly continued claims in order to receive benefits.

DECISION:

The Iowa Workforce Development decision dated December 5, 2020 that determined Ms. Everhard was not eligible for Pandemic Unemployment Assistance (PUA) benefits is modified in favor of the appellant, Ms. Everhard. Ms. Everhard is eligible for PUA benefits effective November 21, 2020 pursuant to subparagraph (kk).



Daniel Zeno
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February 18, 2021
Decision Dated and Mailed

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