

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN J TEMEYER
Claimant

APPEAL NO: 08A-DUA-00004-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FEDERAL UNIT
ADMINISTRATIVE OFFICE**

**OC: 05/25/08 R: 03
Claimant: Appellant (4)**

20 CFR 625.4 - Unemployment Caused by a Major Disaster

STATEMENT OF THE CASE:

Justin J. Temeyer (claimant) appealed a Disaster Unemployment Assistance (DUA) July 11, 2008 decision that concluded he was ineligible to receive DUA because he was not unemployed as a result of a major disaster. A telephone hearing was held on August 25, 2008. The claimant participated in the hearing with his attorney, A.J. Flickinger, and Jeff Temeyer. During the hearing, Claimant Exhibit A was admitted as evidence. 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 June 26, 2008, with an effective date of May 25, 2008. The claimant is a self-employed farmer. The claimant has 1,302 acres of farm land in Buchanan and Fayette County, Iowa. Both counties were declared major disaster areas. (Claimant Exhibit A.)

In 2008, the claimant planted 420 acres of corn and 882 acres of soybeans. In a normal year, the claimant would be working more than 40 hours a week doing field work in late May, June and July.

Starting in late April or early May 2008, it started raining excessively. As a result of heavy rains and wind, the claimant experienced disaster conditions – flooding - on his farm. The claimant's crops were damaged as a result of the excessive amount of rain, wind and flooding. The disaster conditions caused approximately six percent of the claimant's crops to be substantially damaged.

As of May 25, 2008, the claimant was unable to perform his customary full-time hours in the fields, due to the weather and soil conditions. He continued to work less than his normal hours in the field through July 19. The week of July 20 was the first time the claimant was able to

work 40 hours or more in his fields. Even though the claimant replanted some of the crops, it is not known if the crops will mature before the first frost occurs.

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 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 did not demonstrate sufficient damage to his crops to warrant DUA benefits throughout the crop season. However, the claimant was unable to work and perform his customary field work for the weeks ending May 31 through July 19, 2008. In these weeks he worked less than his customary full time hours because of the soil and weather conditions. The claimant is eligible to receive DUA benefits for the weeks ending May 31 through July 19, 2008.

If there are weeks subsequent to July 19 that the claimant works less than his customary hours, especially during harvest, he can file a continued claim and make a request for DUA benefits by reporting the actual number of hours he worked in his fields. The Department could then re-evaluate the claimant's situation and decide if he is working less than his customary hours on a week-by-week basis.

DECISION:

The DUA decision dated July 11, 2008, is modified in the claimant's favor. As of May 25, 2008, the claimant is eligible to receive DUA benefits for weeks he works less than his customary full-time hours. The claimant is eligible to receive benefits for the weeks ending May 31 through July 19, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs