

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYLER RUSSO
Claimant

APPEAL 20A-DUA-00558-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (4)

PL 116-136 Section 2101 – Pandemic Unemployment Assistance
20 CFR § 625 – Disaster Unemployment Assistance
Iowa Code § 96.4(4) – Determination of Benefits

STATEMENT OF THE CASE:

On October 6, 2020, the claimant filed an appeal from the September 27, 2020 Assessment for Pandemic Unemployment Assistance (“PUA”) benefits decision that found he was not eligible for PUA benefits. After due notice was issued, a telephone hearing was held on November 18, 2020. Claimant participated personally. Felix Rogers participated as a witness for the claimant. Claimant’s Exhibit A was admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUE:

Is the claimant eligible for PUA benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his initial claim for regular unemployment insurance benefits funded through the State of Iowa with an effective date of March 29, 2020. Claimant did not have sufficient qualified earnings in the base period in which to become monetarily eligible for unemployment insurance benefits funded by the State of Iowa. Claimant filed his application for PUA benefits and attached a letter from Mr. Rogers confirming his employment as an independent contractor with Inthegym Hoops LLC.

Since 2018, the claimant has been self-employed part-time as a videographer. He primarily works with youth sports. He would attend basketball games, videotape them, and then edit the footage for players. When the COVID 19 pandemic occurred in March of 2020, the events that the claimant would attend were cancelled. Claimant was unemployed from March 15, 2020 until April 30, 2020, when he moved to Florida. While in Florida he worked another part-time job with Florida Gulf Coast Power and Light. Claimant returned from Florida in August of 2020 to attend college full-time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

Claimant's initial claim for benefits was effective March 29, 2020. Claimant was not monetarily eligible for regular unemployment insurance benefits funded by the State of Iowa because he lacked qualified earnings in his base period.

The CARES Act was established to provide 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. However, the claimant must be a "covered individual" under the Act. PL 116-136 Section 2102(a), (b), (c), and (h) 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 (ll); 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)(ll).

(emphasis added).

(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.

(h) RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE AND DISASTER UNEMPLOYMENT ASSISTANCE. —

Except as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if— (1) the term “COVID–19 public health emergency” were substituted for the term “major disaster” each place it appears in such section 625; and (2) the term “pandemic” were substituted for the term “disaster” each place it appears in such section 625.

Disaster Unemployment Assistance was established for the payment of unemployment assistance to claimants whose unemployment is caused by a major disaster. 20 CFR § 625.1.

20 CFR § 625.4 provides in pertinent part:

Disaster Unemployment Assistance.

Eligibility requirements for Disaster Unemployment Assistance.

An individual shall be eligible to receive a payment of DUA with respect to a week of unemployment, in accordance with the provisions of the Act and this part if:

(g) The individual is able to work and available for work within the meaning of the applicable State law; *Provided*, that an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment; or, in the case of an unemployed self-employed individual, the individual performs service or activities which are solely for the purpose of enabling the individual to resume self-employment.

A self-employed individual is defined as 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). An unemployed self-employed individual is defined as 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 as provided in § 625.5(b). 20 CFR § 625.2(t).

With regards to an unemployed self-employed individual, 20 CFR § 625.5(b) provides that the unemployment of an unemployed self-employed individual is caused by a major disaster if –

- (1) The individual has a “week of unemployment” as defined in § 625.2(w)(2) following the “date the major disaster began” as defined in § 625.2(e), and such unemployment is a direct result of the major disaster, or
- (2) The individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster, or
- (3) The individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster, or
- (4) The individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

Unemployment is a direct result of the major disaster as provided for in 20 CFR § 625.5(c), which provides:

For the purpose of paragraphs (a)(1) and (b)(1) of this section, a worker’s or self-employed individual’s unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual’s unemployment is a direct result of the major disaster if the unemployment resulted from:

- (1) The physical damage or destruction of the place of employment;
- (2) The physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or
- (3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

In this case, the claimant is not monetarily eligible for unemployment insurance benefits funded by the State of Iowa pursuant to Iowa Code § 96.4(4)a. This is due to a lack of being paid sufficient wages in insured work during the base period. Claimant therefore meets the requirements of PL 116-136 Section 2102(a)(3)(A)(i); however, he **must also** meet the requirements of PL 116-136 Section 2102(a)(3)(A)(ii) to qualify as a “covered individual” under the CARES Act. PL 116-136 Section 2102(a)(3)(A)(ii)(I) establishes that the claimant must provide self-certification that he is otherwise able to work and available for work within the meaning of applicable State law, except that he is unemployed, partially unemployed, or unable or unavailable to work because of one of the enumerated reasons listed in (aa) through (II).

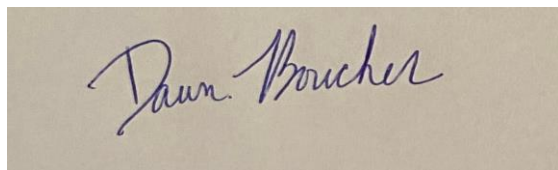
UIPL No. 16-20 Change 2 provides in pertinent part that Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligible for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides 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.

In this case, beginning March 15, 2020 and through April 30, 2020, the claimant experienced a significant diminution of work and was unemployed because of the cancellation of youth sports events during the COVID 19 pandemic. PUA benefits are allowed from March 15, 2020 through April 30, 2020 under PL 116-136 Section 2102(a)(3)(A)(ii)(kk). After April 30, 2020, the claimant was no longer able to and available for work as he had moved out of state and was working for another employer. He then returned to schooling on a full-time basis and was not able to and available for work. PUA benefits are denied after April 30, 2020.

DECISION:

The September 27, 2020 Assessment for Pandemic Unemployment Assistance (PUA) benefits decision denying PUA benefits is modified in favor of the appellant. PUA benefits are allowed from March 15, 2020 through April 30, 2020 under PL 116-136 Section 2102(a)(3)(A)(ii)(kk).



Dawn Boucher
Administrative Law Judge

November 30, 2020
Decision Dated and Mailed

db/mh