

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**MICHAEL KELLY**  
Claimant

**APPEAL 20A-DUA-00650-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 04/05/20**  
**Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

On October 9, 2020, Michael Kelly (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated September 30, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA).

A telephone hearing was held on November 20, 2020. The parties were properly notified of the hearing. The claimant participated personally.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUE:**

- I. Is the claimant eligible for Pandemic Unemployment Assistance?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant has been self-employed as a provider of creative services since approximately 2012. One of his major clients, Pizza Ranch, contacted him in late March 2020 to notify him that it no longer needed his services. Claimant provided creative services related to online advertising for Pizza Ranch. It no longer needed claimant's services because of the pandemic. Specifically, it was greatly reducing its advertising because the operations of many of its stores would be restricted or stopped.

Claimant has been providing creative services for Pizza Ranch since 2013. At the time he lost its business in March 2020, it accounted for approximately 40 percent of his income. Claimant has slowly been working to replace that business with business from other clients. However, he has not yet fully replaced that lost business. Pizza Ranch has not yet contacted claimant to request he begin providing services to it again.

Claimant is not eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC).

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the Iowa Workforce Development decision dated September 30, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is REVERSED. Claimant is eligible for PUA from the benefit week ending April 4, 2020.

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” within the meaning of applicable law.

(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—

(l) 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 (l); 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)(l).

The U.S. Department of Labor has provided guidance on PUA eligibility to state workforce agencies. In Unemployment Insurance Program Letter No. 16-20, Change 2, the following guidance was issued:

b. Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(l)(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.

The administrative law judge finds claimant experienced a significant diminution of work because of COVID-19. One of his major clients, Pizza Ranch, contacted him in late March 2020 to notify him that it no longer needed his services. Claimant provided creative services related to online advertising for Pizza Ranch. It no longer needed claimant’s services because of the pandemic. Specifically, it was greatly reducing its advertising because the operations of many of its stores would be restricted or stopped.

Claimant has been providing creative services for Pizza Ranch since 2013. At the time he lost its business in March 2020, it accounted for approximately 40 percent of his income. Claimant has slowly been working to replace that business with business from other clients. However, he has not yet fully replaced that lost business. Pizza Ranch has not yet contacted claimant to request he begin providing services to it again.

Claimant is not eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC).

**DECISION:**

The Iowa Workforce Development decision dated September 30, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is REVERSED. Claimant is eligible for PUA from the benefit week ending April 4, 2020.



---

Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

December 3, 2020  
Decision Dated and Mailed

abd/mh