

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLA J SCHLICHTING
Claimant

APPEAL NO. 08A-DUA-00020-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FEDERAL UNIT
ADMINISTRATIVE OFFICE**

**OC: 06/08/08 R: 02
Claimant: Appellant (1)**

20 CFR 625.4 - Unemployment Caused by a Major Disaster

STATEMENT OF THE CASE:

The claimant appealed a Disaster Unemployment Assistance (DUA) decision dated August 5, 2008, 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 scheduled for September 2, 2008. Proper notice of the hearing was given to the claimant. By request of the party, the telephone hearing was changed to and held on August 25, 2008. The claimant did participate in the hearing. Based on the administrative file and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered. Claimant participated. Exhibit AAA was admitted into evidence.

ISSUE:

Is the claimant eligible to receive DUA benefits?

FINDINGS OF FACT:

The claimant filed an application for DUA on July 9, 2008, with an effective date of June 8, 2008. The claimant is a self-employed farmer and works for a family farm corporation. The claimant has a 640-acre farm in Franklin County, Iowa, which was declared a major disaster area. They raise corn and soybeans on the farm. Claimant suffered a 12 percent replanting loss and potential yield loss overall of about 15 percent to 20 percent. Claimant's work hours were reduced from 15 hours a week to about zero hours a week during the disaster period.

Claimant also works for a family farm corporation. For the time period June 8, 2008 through July 5, 2008, claimant received a monthly salary from the corporation of \$500.00 per month. Claimant's salary did not diminish as a result of the disaster.

Starting in June 2008, disaster conditions in the form of heavy rains caused flooding on the claimant's farm and damage to the crops. There is substantial proof that disaster conditions caused the claimant to be unable to perform his customary self-employment and caused the claimant's hours of self-employment to be substantially reduced. Claimant's corporate salary was not reduced.

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, part-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 is ineligible to receive DUA benefits because he was not unemployed due to the disaster. Claimant received her normal salary from the corporation during the disaster period. Therefore claimant was not unemployed due to the receipt of her normal pay from the corporation. If the pay had been suspended claimant would have been eligible for benefits. This is not an issue of credibility of the witnesses, it is an issue of law. Receipt of the salary during the disaster period is proof of employment.

DECISION:

The DUA decision dated August 5, 2008, is affirmed. The claimant is ineligible to receive DUA benefits.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css