

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIO T VAN DIJK
Claimant

APPEAL 20A-DUA-00743-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 05/31/20
Claimant: Appellant (2)

PL 116-136, Sec. 2012 – Federal Pandemic Unemployment Assistance
20 CFR § 625 – Disaster Unemployment Assistance

STATEMENT OF THE CASE:

On October 12, 2020, the claimant filed a timely appeal from the Iowa Workforce Development decision dated October 7, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) benefits.

After proper notice, a telephone hearing was conducted on December 2, 2020. The claimant participated personally. The administrative law judge took official notice of the administrative records.

ISSUE:

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:

In March 2020, the United States declared a public health emergency based on the COVID-19 pandemic. Claimant filed a claim for state unemployment insurance benefits with an effective date of May 31, 2020. Claimant is self-employed and has no insured wages in his monetary record. Therefore, claimant is not eligible for regular unemployment insurance benefits.

Claimant has owned and operated his own business as a contract chief financial officer since 2018. Claimant enters into contracts to work as a CFO for companies that need professional financial services. He does not have one main customer. Since establishing his claim for benefits, claimant has been unable to work because customers businesses closed, and he lost his contracts. New businesses are not able to afford his services. Claimant was making as much as \$10,000.00 a month prior to the pandemic.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the administrative law judge finds that claimant is eligible for PUA benefits.

The Coronavirus Aid, Relief, and Economic Security 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” 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

(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 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.

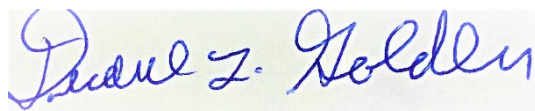
With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

In this case, claimant 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 May 31, 2020. Claimant must report his earnings that he has made each week thus far so those wages can be deducted from his benefits.

DECISION:

The Iowa Workforce Development decision dated October 7, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) benefits is reversed.

PUA benefits are allowed, but claimant must report any wages he earns each week he files a claim for unemployment insurance benefits. Claimant is responsible for ensuring accurate and complete gross wages are recorded each week he files a claim for benefits.



Duane L. Golden
Administrative Law Judge

December 14, 2020
Decision Dated and Mailed

dlg/scn