

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RYAN TEWIS
Claimant

APPEAL 21A-DUA-01620-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 09/27/20
Claimant: Appellant (2)

PL 116-136, Sec. 2012 – Federal Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

On May 10, 2021, the claimant appealed the assessment for Pandemic Unemployment Assistance (PUA) decision dated March 9, 2021 that denied benefits. A hearing was scheduled for July 10, 2021 at 1:00 p.m. The claimant participated. The administrative law judge took official notice of the administrative records. Exhibits A, D-1 and D-2 were admitted into record.

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:

The claimant, Ryan Tewis, filed the application for PUA on January 17, 2021. On the claimant's application for PUA he provided information about himself. The claimant wrote the reason for being unemployed, "My place of employment is closed as a direct result of the Covid-19 public health emergency."

The claimant explained the employer's facility closed in March 2020. The employer ordered all employees to telework while the facility was closed. The claimant was on an extended leave of absence which began on July 27, 2019 and was expected to return on April 24, 2020.

The claimant has two children, one of which attends Prairie Heights Elementary which is part of the Cedar Rapids Public School District. Prairie Heights closed in March 2020, in response to Governor Kim Reynolds' March 17, 2020 proclamation.

Prior to his scheduled return date on April 24, 2020, the claimant attempted to inform his employer that he was having difficulty logging in from home and attempted to get software and equipment, so that he could work from home. The employer reached out to him subsequently regarding whether he wanted to extend his leave of absence and asking him what help he needed to return. They did not come to a mutual understanding regarding his return from leave.

On May 18, 2020, the employer sent the claimant a letter saying that it needed him to contact it or its third party leave administrator, Matrix, by May 25, 2020. It stated if they did not hear back from him by May 25, 2020, that he would be terminated on May 26, 2020. The claimant did not contact the employer or Matrix after receiving the letter.

In January 2021, Prairie Heights Elementary announced that parents would have the option for their children to engage in 100% in person instruction.

The following section outlines the claimant's receipt of regular unemployment, Pandemic Emergency Unemployment Compensation and extended benefits:

The claimant filed a claim for benefits effective September 9, 2020. The claimant filed weekly claims for the weeks ending October 3, 2020 through December 19, 2020. The claimant did not receive benefits for the week ending December 26, 2020. He continued to receive benefits from the week ending January 2, 2021 to the week ending April 17, 2021.

On December 12, 2020, a representative issued a decision, reference 02, which found him eligible for benefits. The employer appealed this determination which resulted in an administrative law judge decision which determined he was discharged due to willful misconduct on May 26, 2020.

A disqualification decision was mailed to the claimant's address of record on March 9, 2021. This decision had a warning that stated an appeal must be filed before March 20, 2021, which fell on a Saturday. The appeal period was extended to the following Monday, March 22, 2021. (Exhibit D-1) On March 21, 2021, the claimant submitted his appeal through the Iowa Workforce Development Online Appeal Portal. The claimant provided confirmation of his appeal on that date. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely. The administrative law judge further concludes the claimant is eligible for PUA effective December 7, 2020 to January 3, 2021, provided his appeal with the Employment Appeal Board ("EAB") is not successful.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1,

paragraphs “a” through “h”. Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant submitted his appeal with the appeal period stated on the assessment for PUA benefits because the period was tolled to the next working day on March 22, 2021. The claimant's appeal is timely because he submitted it on March 21, 2021.

The next issue to evaluate is whether the claimant is eligible for PUA.

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.

That period was subsequently extended through the week ending March 13, 2021 and, in some cases, through the week ending April 10, 2021. See Consolidated Appropriations Act of 2021. On March 11, 2021, the President signed into law another extension for PUA benefits until September 4, 2021. Governor Kim Reynolds has limited eligibility for PUA benefits to weeks occurring before June 12, 2021.

The issue to be determined here is whether claimant is a “covered individual” within the meaning of applicable law.

The issue to be determined here is whether claimant is a “covered individual” within the meaning of applicable law. Section 2102(a)(3) defines individuals who are eligible for PUA benefits.

(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).

As stated above, the claimant must show he is a "covered individual" within the meaning of applicable law.

The first threshold the claimant needs to clear is to show he satisfies Section 2102(a)(3)(i) by showing he is ineligible for regular unemployment, extended benefits and PEUC benefits. The claimant did not file his claim until January 17, 2021. The claimant filed his claim after December

27, 2020. The claimant did not receive benefits for the week ending December 26, 2020. He can only backdate his claim to December 6, 2020. See Department of Labor, Unemployment Insurance Program Letter, No. 16-20 Change 4, (January 8, 2021)(stating at pg. I-19 initial claims filed after December 27, 2020 can only be back dated to December 7, 2020 in states with Sunday week end date). As a result, the claimant cannot receive PUA benefits for weeks prior to that date. The claimant is currently disqualified from other benefits he received after the week ending December 7, 2020. The representative is incorrect that the claimant is ineligible for PUA if he received benefits. The determination is regarding his eligibility. The administrative law judge notes the claimant is currently appealing his eligibility for regular unemployment benefits with the EAB. He currently can fulfill this section after December 7, 2020, pending a reversal from the EAB determining him eligible for benefits during those weeks.

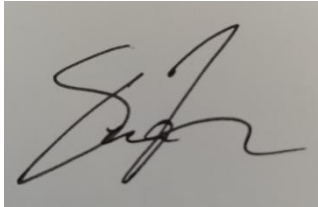
The second threshold the claimant needs to clear is to show he satisfies Section 2102(a)(3)(i)(ii)(l)(aa)-(ll).

The claimant stated on his application for PUA that he could self-certify under Section 2102(a)(3)(i)(ii)(l)(jj) because his previous employer's business shut down in response to Covid19. The administrative law judge concludes the claimant cannot self-certify under this provision because the employer offered its employees including him the opportunity to continue through telework. Section 2102(a)(3)(i)(ii)(l)(B) which excludes an individual who has the ability to telework with pay. The claimant contends his employment does not fall within this rationale because the employer did not provide him the equipment to telework. The difficulty for the claimant is that the explanation for why he was not provided the equipment is that either there was a miscommunication or a nefarious plot by his supervisor. Such reasons are superseding to any explanation that he was unemployed due to the closure of the employer's facility or any other Covid19 direct cause, especially given the fact that he was not even working in the facility when it closed. Furthermore as stated above, this period cannot be claimed because he filed after December 27, 2020.

During the hearing, the claimant self-certified under another provision, Section 2102(a)(3)(i)(ii)(l)(dd), because he had to help with the virtual instruction of his child due to the closure of Prairie Heights. The administrative law judge concurs with this self-certification because the claimant's child is four years old and would require assistance in virtual instruction. Section 2102(a)(3)(i)(ii)(l)(B)'s exclusion eligibility does not extend to this self-certification because the claimant was required to provide ongoing and constant attention to his child's instruction. However, Cedar Rapids School System allowed for 100% in-person instruction beginning on January 4, 2021. As a result, the claimant's eligibility under this self-certification ends on January 3, 2021.

DECISION:

The assessment for PUA benefits decision dated March 9, 2021 that determined claimant was ineligible for federal PUA is reversed. PUA benefits are granted effective from the week ending December 7, 2020 to the week ending January 3, 2021, pending a reversal from the EAB regarding his appeal of 21A-UI-01600-LJ-T.



Sean M. Nelson
Administrative Law Judge
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July 21, 2021
Decision Dated and Mailed

smn/lj