

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JOEL M FOREMAN**  
Claimant

**APPEAL NO. 21A-DUA-00495-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 04/05/20**  
**Claimant: Appellant (1)**

PL 116-136 Section 2102 – Pandemic Unemployment Assistance

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 30, 2020 Assessment for PUA Benefits decision that denied Pandemic Unemployment Assistance (PUA) benefits, based on the deputy's conclusion that the claimant did not meet the eligibility requirements. After due notice was issued, a hearing was held on March 8, 2021. Claimant participated. Exhibits A and B received into the hearing record.

The administrative law judge took official notice of Agency administrative records pertaining to the claimant's claim for benefits, including DBRO, KCCO, KPYX, WAGE-A, NMRO, the monetary record, the application for PUA benefits, the Assessment for PUA Eligibility, the deputy's notes regarding the denial of PUA, and the November 20, 2020, reference 01, decision, along with the deputy's fact-finding interview notes.

The administrative law judge has also taken official notice of the Solon Community School District's academic calendars for the 2019-2020 and 2020-2021 academic years.

The administrative law judge left the hearing record open for the limited purpose of allowing the claimant the opportunity to submit documentation in support of the claimant's appeal of the PUA denial decision. The claimant submitted three additional documents that were received into the hearing record as Exhibits C, D and E.

**ISSUE:**

Is the claimant eligible for PUA?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Joel Foreman is employed by Solon Community School District as a full-time choir teacher.

The claimant established an original claim for benefits that was effective April 5, 2020. The claimant's base period for purposes of his original claim and for PUA eligibility purposes

consists of the four quarters of 2019. Solon CSD was the sole base period employer. The claimant's base period wages were as follows:

| <u>Quarter</u> | <u>2019/1</u> | <u>2019/2</u> | <u>2019/3</u> | <u>2019/4</u> |
|----------------|---------------|---------------|---------------|---------------|
| Wages          | 19,848.17     | 33,193.71     | 6129.99       | 18,640.44     |

Based on the base period wages and the claimant's report of four dependents, Iowa Workforce Development set the claimant's weekly benefit amount for regular benefits at \$591.00.

The claimant's quarterly wages in 2020 were as follows:

| <u>Quarter</u> | <u>2020/1</u> | <u>2020/2</u> | <u>2020/3</u> | <u>2020/4</u> |
|----------------|---------------|---------------|---------------|---------------|
| Wages          | 18816         | 31191         | 6201          | 18756         |

When the District discontinued in-person classes in mid-March 2020, the claimant transitioned to teaching online from home, continued to perform his full-time teaching duties, and continued to receive his regular full-time wages through the scheduled end of the academic year, June 5, 2020. The claimant had reasonable assurance of continued employment with Solon CSD in the 2020-2021 academic year. At the end of the summer break, the claimant commenced work for the District on August 24, 2020 in preparation for the August 31, 2020 first day of school.

Though the claimant asserts his wages for the 2019-2020 academic year were around \$58,000.00, wage reports submitted by the employer indicate the wages were actually \$74,777.00 (third quarter 2019 through second quarter 2020, rounded). That translates to \$1,869.00 (rounded) per week during the 41-week academic year (August 26, 2019 through June 5, 2020). Thus, the claimant earned \$1,824.00 (rounded) in weekly wages for each of the nine weeks between April 5, 2020 through June 5, 2020. Given that the wages increased for the new academic year, the claimant earned at least \$1,824.00 in weekly wages for the period beginning August 23, 2020 until the claimant discontinued his claim for benefits following the benefit week that ended September 20, 2020. Though the claimant has a 10-month contract, the district spreads his pay over a 12 month period so the claimant does not have to go without pay during the summer break between academic terms.

The claimant has four supplemental self-employment ventures. The primary self-employment venture is as a private voice, piano and guitar instructor, for which the claimant charges each students \$90.00 per month. While the claimant did not specify the months during which he usually provides private lessons and has not provided an applicable record for 2019, a reasonable person would presume the bulk of the lessons would coincide with the academic year. The claimant had two to three dozen private lesson students at the time the studio space he rents closed in response to the COVID-19 pandemic. The claimant waited to the start of the 2020-2021 academic year to explore transitioning students to video conference lessons. Video conference lessons may not have been a workable option for some younger students. The claimant has a second self-employment as occasional clinical instructor and this can extend beyond the academic year to around July 4, 2020. This type of work was not available in the context of the COVID-19 pandemic. The claimant has a third self-employment venture as an occasional musical performer at restaurants and other venues. Such opportunities were not available in the context of the COVID-19 pandemic. The claimant advises that he received no written correspondence advising him of music gigs or clinic instructor opportunities were cancelled due to COVID-19. The claimant has a fourth self-employment venture as a woodworker and shifted some of his effort toward this venture in the context of the COVID-19 pandemic. The claimant reports all of his supplemental self-employment revenue as revenue from his work as a voice instructor when he completes his tax return.

The claimant submitted his application for Pandemic Unemployment Assistance (PUA) on November 24, 2020. The claimant attached a 2019 Form 1040 Schedule C Profit or Loss Business Form reflected \$23,115.00 in gross receipts or sales at Line 1, but zero net profit at Line 31. The claimant has provided a 2020 Schedule C that reflects \$6,935.00 in gross receipts at Line 1 and a \$201.00 net profit at Line 31.

The claimant is married and has three school-aged children at home. The children are 13, 11 and six year old. The claimant's wife works part-time and is the primary care giver for the children. No one in the family was diagnosed with COVID-19 or dealing with COVID-19 like symptoms during the period when claimant was claiming unemployment insurance benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

The claimant is not monetarily eligible for regular unemployment insurance benefits funded by the State of Iowa because the claimant lacks qualified earnings in his base period.

Public Law 116-136, the CARES Act, at Section 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. Section 2012 provides Pandemic Unemployment Assistance 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. PL 116-136 Section 2102(a), (b) and (c), 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

(II) 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 (I); 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)(I).

**(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.

The claimant is not eligible for PUA benefits. The claimant cannot be considered for PUA benefits for the period of April 5, 2020 through June 5, 2020 or for the period of August 24, 2020 through September 12, 2020 because he was employed full-time during that period, received full-time wages during that period and his weekly wages well exceeded his weekly benefit amount. The claimant was able to perform his public school teaching duties from home via videoconference. The claimant cannot be considered unemployed during the period of April 5, 2020 through June 5, 2020 or during the period of August 24, 2020 through September 12, 2020.

That leaves the period of June 6, 2020 through August 22, 2020. The claimant cannot establish PUA eligibility based on the school employment because this period was between academic terms and the claimant had reasonable assurance of continued employment in the next school year.

The United States Department of Labor (USDOL) has provided guidance for interpreting and applying Section 2102 through a series of Unemployment Insurance Program Letters (UIPLs). Such guidance is helpful when a particular claimant does not on the surface fit neatly within one of the “covered individual” categories referenced above. Through the UIPLs referenced below, the USDOL introduced the notion of eligibility for PUA based on “significant diminution of work as a result of COVID-19” and tied this to Section 2102(a)(3)(A)(ii)(I)(kk), regarding “additional criteria established by the Secretary for unemployment assistance under this section.”

UIPL 16-20 (4/5/20), p. I-6, provides as follows:

- k) The individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

- The Secretary has determined that, in addition to individuals who qualify for benefits under the other criteria described above, an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities. For example, a driver for a ridesharing service who receives an IRS Form 1099 from the ride sharing service may not be eligible for PUA benefits under the other criteria outlined above, because such an individual does not have a “place of employment,” and thus cannot claim that he or she is unable to work because his or her place of employment has closed. However, under the additional eligibility criterion established by the Secretary here, the driver may still qualify for PUA benefits if he or she has been forced to suspend operations as a direct result of the COVID19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations unsustainable.

UIPL 16-20, Change 1 (4/27/20), p. I-11, provides as follows:

42. Question: UIPL No. 16-20 provides an example of a driver for a ridesharing service who is forced to significantly limit his or her performance of customary work activities because of the COVID-19 public health emergency, such as if a state or municipal order restricting movement makes continued operations unsustainable, indicating that he or she may be eligible for PUA under section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. Does this apply to other types of independent contractors?

Answer: Yes. An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act. This includes an independent contractor who experiences a significant diminution of work as a result of COVID-19.

UIPL 16-20, Change 2 (7/21/20), p. I-4, provides as follows:

10. Question: Is a self-employed child care provider who is providing child care for fewer children as a result of the COVID-19 pandemic eligible for PUA?

Answer: If the self-employed child care provider can establish that he or she has experienced a significant diminution of his or her customary full-time services because of COVID-19, he or she may be eligible for PUA under the additional eligibility criterion established by the Secretary pursuant to Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. This individual's benefit amount may be reduced because of income from continued partial employment.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge

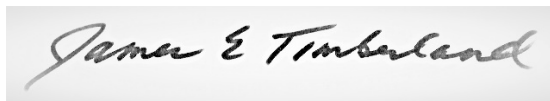
should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The claimant has presented insufficient evidence to establish a significant diminution in the self-employment work during the period of June 6, 2020 through August 23, 2020 as a direct result of COVID-19. In 2019, the claimant's self-employment ventures generated zero net revenue, according to the Schedule C the claimant included with his 2019 tax return. In 2020, the claimant's self-employment ventures generated a \$201.00 net profit. In other words, the net return from the self-employment ventures increased in 2020. The weight of the evidence establishes that the impact of the loss of studio space was confined to that time when the claimant was working full-time for the school district, during which time he could not be considered unemployed. The claimant has presented insufficient evidence to establish otherwise, despite the invitation to supplement the evidence presented at the hearing. The weight of the evidence establishes that the claimant could have transitioned to teaching private lessons via videoconference, just as he had transitioned to performing his school teaching duties via videoconference. The claimant elected to defer exploring that option, even though it was obvious step to take if he wished to continue the venture. The claimant has presented insufficient evidence to substantiate his assertion that clinical teaching opportunities or gigging opportunities were canceled due to COVID-19. A reasonable person would expect some documented correspondence would be available to substantiate such claims, but the claimant has provided none.

The claimant is not eligible for Pandemic Unemployment Assistance (PUA) benefits.

**DECISION:**

The December 30, 2020 Assessment for PUA Benefits decision is affirmed. The claimant is not eligible for Pandemic Unemployment Assistance (PUA) benefits.



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James E. Timberland  
Administrative Law Judge

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March 16, 2021  
Decision Dated and Mailed

jet/kmj