

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLE NICOLETTI
Claimant

APPEAL 21A-DUA-00813-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/20/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Nicole Nicoletti, filed an appeal from the Iowa Workforce Development decision dated January 16, 2021 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) benefits.

After proper notice, a telephone hearing was held on April 5, 2021. The claimant participated personally. Dianna Foley testified on behalf of claimant. 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. The claimant filed a claim for state unemployment insurance benefits with an effective date of December 20, 2020. The claimant is self-employed and has no insured wages in her monetary record. Therefore, the claimant is not eligible for regular unemployment insurance benefits.

The claimant then applied for Pandemic Unemployment Assistance (PUA) benefits. The claimant provides interior design services. The claimant operates out of her home. The claimant doesn't operate under a business name

It has operated since 2011 on a part-time basis. She has not filed any tax returns based upon earnings in this capacity. Claimant charges generally \$16.00 per hour. Claimant works part-time due to having two toddlers at home. . She does not have a business website but relies upon social media to advertise. Claimant's customers are primarily people she knows and in her community. Claimant stated due to COVID-19, people have not wanted her to be in their homes and lack discretionary income to afford her services. (For example, claimant can paint murals for nurseries.) Ms. Foley is the claimant's mom's best friend and stated she had intended to have

claimant come help her redo their den and living room. However, due to her husband's health and reduced wages, they have not been able to utilize claimant's services as hoped.

The claimant has no other barriers to employment. The claimant has not had symptoms of COVID-19. No one in the claimant's household has been diagnosed with COVID-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not eligible for Pandemic Unemployment Assistance (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 Continued Assistance for Unemployed Workers Act of 2020 (enacted December 27, 2020) and American Rescue Act of 2021 (enacted March 11, 2021) extended PUA benefits for weeks of unemployment to September 6, 2021. 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.

Here, claimant is a self-employed individual, but she was not unemployed due to COVID-19. She is able to keep working from her home. The administrative law judge has reviewed the facts and applicable laws carefully, and although the administrative law judge is sympathetic to claimant's situation, she does not meet the definition of an unemployed worker who is entitled to PUA benefits under the law, as outlined above. Claimant's unemployment was not caused by COVID-19, although it may be the result of a longer chain of events precipitated or exacerbated by COVID-19. The request for Pandemic Unemployment Assistance is denied.

DECISION:

The Iowa Workforce Development decision dated January 16, 2021 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is AFFIRMED. The claimant's request for PUA benefits is denied.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 8, 2021
Decision Dated and Mailed

jlb/kmj

NOTE TO CLAIMANT:

This decision determines you are not eligible for PUA benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>