

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE R VISEK
Claimant

APPEAL NO: 08A-DUA-00045-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FEDERAL UNIT
ADMINISTRATIVE OFFICE**

**OC: 06/08/08 R: 02
Claimant: Appellant (4)**

20 CFR 625.6(f)(2) – Weekly Income Reduces Weekly DUA Benefit Amount

STATEMENT OF THE CASE:

Kyle R. Visek (claimant) appealed a Disaster Unemployment Assistance (DUA) September 24, 2008 decision that concluded he was ineligible to receive DUA benefits as of August 25, 2008, because he had returned to working his customary work. A telephone hearing was held on October 28, 2008. The claimant participated in the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the claimant, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

ISSUE:

Is the claimant ineligible to receive benefits as of August 25, 2008?

FINDINGS OF FACT:

The claimant established a DUA claim with an effective date of June 8, 2008. The claimant's weekly DUA amount is \$147.00.

Prior to the flood, the claimant worked at Iowa Union Memorial. When this building was flooded, the claimant became unemployed. Although Iowa Union Memorial is still closed, the claimant has obtained part-time temporary employment with the Emergency Jobs Program provided by Kirkwood Community College. (Claimant Exhibit A.) Since August 25, 2008, the claimant has earned gross wages of more than \$162.00 a week from this job.

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).

An individual is "totally unemployed" in a week during which he performs no services. "Partially unemployed" is defined as "a week during which the individual performs less than the customary full-time services, 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). (Emphasis supplied).

The Department previously determined the claimant was eligible to receive DUA benefits because he became an unemployed worker when the building where he worked closed as a result of flood damage. The basis for the current disqualification in this case stems around the fact the claimant receives wages from a temporary part-time job in which he earns more than his weekly DUA benefit amount.

20 CFR § 625.6(f)(2), states the weekly amount of DUA shall be reduced by the amount of income received from employment during the week it is received and income is defined as gross income. Therefore, during any week in which the claimant earns gross weekly income that exceeds \$162.00, he is not eligible to receive DUA benefits.

DECISION:

The DUA decision dated September 24, 2008, is modified in the claimant's favor. For any week subsequent to the week ending August 30 that the claimant earns gross weekly wages of \$162.00 or more, he is not eligible to receive DUA benefits. However, if his gross weekly wages are less than \$162.00 subsequent to the week ending August 30, he may be eligible for total or partial DUA benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs