

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BERNADETTE HEIT
Claimant

APPEAL 20A-DUA-00585-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/26/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the Iowa Workforce Development decision dated September 24, 2020 that determined claimant was not eligible for Pandemic Unemployment Assistance (PUA) benefits. Claimant was properly notified of the hearing. A telephone hearing was held on December 2, 2020, at 4:00 p.m. Claimant participated in the hearing. Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant is eligible for Pandemic Unemployment Assistance.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last employed by Hawkeye Institute of Technology in the 1990s. Since that time, she has volunteered at a homeless shelter. Claimant receives income from Social Security and farm rent.

During the summer of 2019, claimant began planning a way to supplement her income by selling items at her local farmer's market. Claimant decided on selling microgreens and purchased seeds, tools and a book on the topic during the spring of 2020. On April 24, 2020, the Governor of Iowa restricted farmer's market vendors to those who sell farm products or food and implemented other operational restrictions due to Covid-19; farmer's markets were not mandated to close. Claimant has not sold microgreens at the farmer's market or elsewhere.

Claimant filed an initial claim for unemployment insurance (UI) benefits effective April 26, 2020. Claimant is not eligible for UI.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

The Coronavirus Aid, Relief, and Economic Security (CARES) 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” who is eligible to receive benefits 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—

(l) 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). 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. . .” The United States Department of Labor has issued operating instructions to states in implementing section 2102 of the CARES Act. 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.”

An individual must be unemployed and the unemployment must be caused by a major disaster. 20 CFR 625.4.

Title 20 of the Code of Federal Regulations, section 625.2(t) provides:

(t) Unemployed self-employed individual means an individual who was self-employed in or was to commence self-employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual's performance of service in self-employment, and whose unemployment is caused by a major disaster as provided in § 625.5(b).

Title 20 of the Code of Federal Regulations, section 625.5(b) and (c) provide:

(b) Unemployed self-employed individual. The unemployment of an unemployed self-employed individual is caused by a major disaster if—

(1) The individual has a “week of unemployment” as defined in § 625.2(w)(2) following the “date the major disaster began” as defined in § 625.2(e), and such unemployment is a direct result of the major disaster; or

(2) The individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster; or

(3) The individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster; or

(4) The individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

(c) Unemployment is a direct result of the major disaster. For the purposes of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:

(1) The physical damage or destruction of the place of employment;

(2) The physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or

(3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

The Department of Labor also provides the following definitions:

[A]n individual “lacking sufficient work history” means an individual (1) with a recent attachment to the labor force (2) who does not have sufficient wages in covered employment during the last 18 months to establish a claim under regular UC, and (3)

who became unemployed or partially unemployed because of one of the Covid-19 related reasons identified under Section 2102.

“Self-employed individuals” as defined in 20 C.F.R 625.2(n) means individuals whose primary reliance for income is on the performance of services in the individual’s own business or on the individual’s own farm.

UIPL 16-20, Attachment 1, page 3.

In this case, claimant does not have a recent attachment to the labor force and, thus, does not meet the definition of an individual with insufficient work history. Claimant’s primary reliance for income is not based upon the growing and selling of microgreens at farmer’s market; therefore, claimant does not meet the definition of a self-employed individual.”

Furthermore, claimant has not established that she is unemployed due to Covid-19 for any of the reasons delineated in the statutes above. Claimant was not prevented from working due to Covid-19 illness. The farmer’s market was not physically damaged or closed by the government (for the sale of microgreens); therefore, claimant was able to access the place of employment. Claimant’s unemployment is not the direct result of Covid-19.

Although the administrative law judge is sympathetic to claimant’s situation, claimant does not meet the definition of an unemployed self-employed worker who is entitled to PUA benefits under the law. Claimant does not meet any of the other eligibility requirements for receiving PUA benefits.

DECISION:

The Iowa Workforce Development decision dated September 24, 2020 that determined claimant was not eligible for Pandemic Unemployment Assistance (PUA) benefits is affirmed. Benefits are denied.



Adrienne C. Williamson
Administrative Law Judge
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December 14, 2020
Decision Dated and Mailed

acw/mh