

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LERAY E BLEEKER**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 20A-DUA-00376-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

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PL 116-136, Sec. 2012 – Federal Pandemic Unemployment Assistance  
Iowa Code § 96.6(2) – Filing – Timely Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the Iowa Workforce Development decision dated September 1, 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 October 30, 2020, at 8:00 a.m. Claimant participated in the hearing. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is eligible for Pandemic Unemployment Assistance.  
Whether claimant's appeal is timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The September 1, 2020 decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by September 12, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. September 12, 2020 was a Saturday. Therefore, the appeal period was extended to Monday, September 14, 2020. Claimant appealed the decision online on September 14, 2020. Claimant's appeal was received by Iowa Workforce Development Appeals Bureau on September 14, 2020.

The administrative law judge further finds: In March 2020, the United States declared a public health emergency based on the Covid-19 pandemic. Claimant filed a claim for unemployment insurance benefits with an effective date of April 26, 2020. Claimant is not monetarily eligible for regular unemployment insurance benefits because he is self-employed. Claimant filed an application for PUA.

Claimant is self-employed as a realtor and has been so employed for approximately 19 years. Claimant is associated with the real estate agency Mel Foster Company. Claimant works from his home office and from an office located at Mel Foster. The offices at Mel Foster have not been closed to employees since March 2020. Claimant has not had any specific buyers decide

not to purchase a home due to Covid-19. Claimant has one specific seller who decided not to list their house for sale due to Covid-19. Realtors have the ability to list homes for sale online and to include photographs and virtual tours of the homes. The websites where homes are listed are accessible to buyers. While some buyers and sellers may be hesitant to transact business in person, homes have been sold since March 2020. There has been no prohibition against private individuals allowing a few other individuals into their homes for the purpose of sale- and purchase-related tours.

Claimant has not had symptoms of Covid-19. No one in claimant's household has been diagnosed with Covid-19. Claimant does not require childcare in order to work. Claimant has not had prospective employment terminated due to Covid-19.

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

For the reasons that follow, the administrative law judge concludes that claimant's appeal was timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Claimant's appeal was received by Iowa Workforce Development Appeals Bureau on the appeal due date. Therefore, claimant's appeal was timely.

For the reasons that follow, the administrative law judge concludes that claimant is not eligible for PUA benefits.

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.

In this case, claimant is a self-employed individual, but has not established that he is unemployed due to the Covid-19 pandemic for any of the reasons outlined in the statutes above. To qualify for PUA, claimant's unemployment must be caused by the Covid-19 pandemic. There are four ways that a self-employed individual's unemployment could be caused by Covid-19. See 20 CFR 625.5(b). Claimant was able to reach his place of employment, including both of his offices and properties that were listed for sale. Claimant was not scheduled to commence self-employment. Claimant did not have an injury caused by Covid-19 that prevented him from working. Therefore, to meet the causal requirement, claimant's unemployment must be the direct result of Covid-19. See 20 CFR 625.5(b)(1).

There are three ways that claimant's unemployment could be a direct result of Covid—19. See 625.5(c). Claimant's place of employment was not physically damaged. Claimant's place of employment was not inaccessible due to closure by the government. Claimant's lack of work was not a result of an entity being damaged or destroyed or closed by the government. 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:**

Claimant's appeal is timely. The Iowa Workforce Development decision dated September 1, 2020 that determined claimant was not eligible for Pandemic Unemployment Assistance (PUA) benefits is affirmed. PUA benefits are denied.



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Adrienne C. Williamson  
Administrative Law Judge  
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November 6, 2020  
Decision Dated and Mailed

acw/scn