

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA ROSE
Claimant

APPEAL 20A-DUA-00934-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 10/11/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On November 5, 2020, the claimant filed a timely appeal from the assessment of Pandemic Unemployment Assistance (PUA) benefits dated October 27, 2020 that determined claimant was not eligible for PUA benefits. A telephone hearing was held on December 28, 2020. Claimant was properly notified of the hearing. The claimant participated personally. Exhibits A, B and C were entered into the record. The administrative law judge took judicial 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:

The administrative records show the claimant received \$10,000.00 from JC Toland Painting in the first quarter of 2020. During the hearing, the claimant explained this was a settlement check from JC Toland. The claimant provided the settlement check which looks like an ordinary paystub with the exception that it shows her hourly wage as \$10,000.00 and states she worked for one hour. (Exhibit B)

On October 11, 2020, claimant applied for PUA benefits. The claimant worked as a full time general laborer for J Cleans subcontracting from February 17, 2020 to April 10, 2020. J Cleans subcontracting is owned by Brad Zeroni. During her employment, the claimant worked approximately 35 to 40 hours per week for J Cleans.

The claimant provided two handwritten receipts written by Mr. Zeroni. (Exhibit C) One handwritten receipt is dated March 28, 2020. This receipt shows the claimant received \$720.00 from Mr. Zeroni for her work from March 17, 2020 to March 28, 2020. One handwritten receipt is dated April 3, 2020 which shows she received \$1,280.00 from Mr. Zeroni on that date.

In March 2020, the United States declared a public health emergency based on the COVID 19 pandemic. At that time, claimant's business decreased. Claimant still worked every day to buy

and sell items, but his access to inventory was limited based on cancelled auctions and thrift stores closing.

On April 10, 2020, the claimant separated from employment with J Cleans.

The claimant did not start searching for work until the week ending August 23, 2020 because she was too afraid of being infected by Covid19 to leave her apartment. The claimant has not received a note from her doctor stating she is at heightened risk of Covid19 infection or otherwise restricting her from working during the pandemic. The claimant provided a copy of her work log which shows she began applying for work the week ending August 23, 2020. The claimant said her work search accelerated in November 2020 because she became more fearful about her financial circumstances than being infected with Covid19. In particular, the claimant said she had to reassess whether she could work during the pandemic. The claimant's work log shows she filled out eight applications for various employers throughout November 2020. The claimant filed an application for an employer on December 1, 2020. (Exhibit A) The claimant has not received any work offers as part of her job search.

In mid-December 2020, Mr. Zeroni wrote a note for the claimant which said, "To whom it may concern. I closed my business due to Covid19."

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the administrative law judge finds that claimant is not eligible for 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 issue to be determined here is whether claimant is a "covered individual" within the meaning of applicable law.

Section 2102(a)(3) defines individuals who are eligible for PUA benefits.

(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 decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. 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 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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the employer's version of events is more credible.

The claimant is not eligible for regular unemployment compensation, federal pandemic unemployment compensation or pandemic extended unemployment compensation because she did not earn sufficient wages. So the claimant satisfies the first element of PUA eligibility.

In this case, claimant does not qualify for regular unemployment insurance benefits. The claimant has given shifting explanations for her PUA eligibility. In her claim detail, the claimant contended she was eligible under Public Law 116-136, Sec. 2102(3)(A)(gg) and provided the following explanation, "I am self-employed and have to enter homes of clients. Which [sic] some have backed out due to the Covid19 virus." The claimant filed her claim on October 27, 2020. In the hearing, the claimant implied she was eligible under Public Law 116-136, Sec. 2102(3)(A)(jj). In this account, the claimant said she was unemployed because her employer, J Cleans, suspended business operations from due to one employee being infected with Covid19. However, the claimant then said she did not do a work search for roughly four and a half months due to a general fear of Covid19. The claimant then explained her circumstances became so dire in November that she had to reassess whether "she would work during a pandemic. "

The administrative law judge does not find claimant's allegation that she was laid off due to Covid19 credible for the following reasons. First, the claimant did not offer her being laid off as a reason for her unemployment in her initial filing for claim. Instead, the claimant explained that *some* clients were not as interested in her services. Second, the claimant's allegation that Mr. Zeroni suspended operations for a business of this type for six months solely on the basis of one employee's infection is difficult to believe. Third, the claimant repeatedly expressed fears about working during the pandemic. She further said it was her economic circumstances that made her reassess whether she would work during the pandemic. These statements expressing concern about Covid19 infection lead the administrative law judge to conclude the claimant quit working at J Clean due to an infection of another employee or general concerns regarding the Covid19 pandemic. Even if Mr. Zeroni had laid the claimant off as alleged, the claimant would have to show she continues to be unemployed because of a Covid19 reason. The claimant concedes that much of the period she was unemployed she was not actively seeking work due to a generalized fear of Covid19.

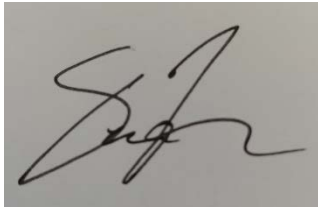
The claimant is not unemployed for any of the reasons related to Covid-19, which are enumerated above. The claimant has a general fear or anxiety about working due to Covid-19, but has not been advised by a health care provider to self-quarantine.

The Department of Labor addressed claimant's situation with the following guidance: "Without having been advised by a health care provider to self-quarantine, and individual who does not go to work due to general concerns about exposure to Covid-19, and who does not meet any of the other Covid-related criteria for PUA, is not eligible for PUA." See UIPL No. 16-20, Change 1, page I-10.

The claimant does not meet the eligibility requirements outlined herein and, thus, does not qualify for PUA benefits.

DECISION:

The assessment for PUA benefits decision dated October 27, 2020 that determined claimant was not eligible for federal PUA is affirmed.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

January 29, 2021
Decision Dated and Mailed

smn/scn