

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAROLD J AULT
Claimant

APPEAL NO. 10A-DUA-00021-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL UNIT
ADMINISTRATIVE OFFICE

**Disaster Declaration Date: 06/06/10
Declaration #: 1930
Claimant: Appellant (1)**

20 CFR 625.4 - Unemployment Caused by a Major Disaster
20 CFR 625.2(t) - Principal Source of Income and Livelihood

STATEMENT OF THE CASE:

The claimant appealed a Disaster Unemployment Assistance (DUA) decision dated November 8, 2010, that concluded the claimant was ineligible to receive DUA because the claimant was not unemployed as a result of a major disaster since his principal source of income and livelihood was not dependent on self-employment. A telephone hearing was held on December 30, 2008. The claimant participated in the hearing. Exhibit A-1 was admitted into evidence at the hearing. 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's principal source of income and livelihood dependent on self-employment?

FINDINGS OF FACT:

The claimant filed an application for DUA on November 5, with an effective date of June 6, 2010. The claimant has 20-acre farm in Storey County, Iowa, which was declared a major disaster area. The claimant raises hay on the farm on 12 acres. Disaster conditions in the form of heavy rains cause flooding on his farm and prevented him from cutting and putting up hay on the 12 acres of hay ground. He normally gets two cuttings of hay and it takes him about a week each time to cut and put up the hay.

In 2009 the claimant had a net loss from farming of \$3,348.00. He typically receives about \$800.00 per year in gross income from his hay crop. His income from sources other than farm self-employment included a one-time IRA distribution of \$141,000.00 and social security retirement benefits of \$1,372.00 per month.

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 and the individual is an "unemployed self-employed individual". 20 CFR § 625.4(d) and (f).

For a self-employed individual, a "week of unemployment" is a week during which an individual is "totally, part-totally, or partially unemployed." An individual is "totally unemployed" in a week during which he performs no services in self-employment due to the disaster. "Partially unemployed" is defined as "a week during which the individual performs less than the customary full-time services in self-employment, 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).

An "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. 20 CFR § 625.2(t). A "self-employed individual" means an individual whose primary reliance for income is on the performance of services in the individual's own business or on the individual's own farm. 20 CFR § 625.2(n).

Under the U.S. Department of Labor's (DOL) interpretation, the major objective of the DUA program is to enable compensation to be paid to those persons who might lose their livelihood because of destruction or loss in a major disaster. This intent has generally been interpreted to require that an individual's activities, the loss of which is claimed to have resulted in unemployment, must have been the individual's principal source of income and means of livelihood and must be reasonably equivalent to those occupational activities by which other individuals in the area earn their livelihood. Disaster Unemployment Assistance (DUA), ET Handbook No. 356, p. II-9 (Oct. 1977).

The claimant's principal source of income and livelihood is not dependent on farming. The claimant's income from social security retirement is much greater than the income he derives from the farm, which is typical of the income distribution. Furthermore, the claimant is in a different situation than an individual whose primary source of income and livelihood depends on self-employment because the claimant's operation is very limited and involves only short-term labor.

The DUA program is an unemployment program and is not a program that directly compensates individuals for economic losses. Benefits are payable to farmers who rely on farming for their principal source of income for weeks when they cannot do their normal work or work less than their normal hours because of disaster conditions. The claimant is not unemployed as a direct result of a major disaster and is not eligible to receive DUA benefits.

DECISION:

The DUA decision dated November 8, 2010, is affirmed. The claimant is not eligible to receive DUA benefits because his principal source of income and livelihood is not dependent upon the performance of services in self-employment.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs