

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIJAH GAY
Claimant

APPEAL 20A-DUA-00853-SN-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:

On November 3, 2020, claimant filed a timely appeal from the Iowa Workforce Development decision dated October 23, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA).

A telephone hearing was held on November 30, 2020. The parties were properly notified of the hearing. The claimant participated personally. Claimant's girlfriend, Sidney Lang, testified as a witness. The department did not participate. Claimant provided 1099 tax forms for 2019 (Exhibit A).

Official notice was taken of the administrative record.

ISSUE:

- I. 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:

Claimant filed the application for PUA on May 5, 2020. The last day claimant worked was March 6, 2020. Claimant was employed at that time by an individual, Rosa Dell, as an on-call laborer. In this position, claimant performed landscaping, housework and maintenance work for Ms. Dell. Claimant provided a 1099 tax form for 2019 showing he received \$1140.50 from Ms. Dell in 2019 (Exhibit A).

The administrative record shows that prior to working for Ms. Dell, claimant worked for the Outing Club, a palatial estate in Dubuque, Iowa. Claimant received earnings from the Outing Club for each quarter in 2019. In the first quarter, claimant received \$1,201.00. In the second quarter, claimant received \$1,292.00. He received \$1,538.00 in the third quarter of 2019. Claimant received \$472.00 in the fourth quarter of 2019.

On March 6, 2020, Ms. Dell informed claimant that she was uncomfortable with him working in her home because an elderly parent and minor children also live there. Ms. Dell felt like this was too much of a risk with an elderly relative (70) living in the house.

On September 20, 2020, Sidney Lang, claimant's girlfriend became ill with Covid19. Most of her symptoms diminished on October 2, 2020. She had some minor symptoms until October 9, 2020. Claimant started taking care of Ms. Lang after they discovered it was Covid19.

On September 25, 2020, Mr. Gay became sick with Covid19. He started recovering on October 4, 2020.

On October 6, 2020, Ms. Lang gave birth to claimant's child.

Mr. Gay believes that Ms. Dell will have more work for him on December 7, 2020. In particular, Ms. Dell said that claimant could perform some landscaping work for her beginning on December 7, 2020. Mr. Gay is unsure how much work will be available at that time.

Claimant gave inconsistent testimony regarding his work search after Ms. Dell stopped assigning him work. Initially, claimant said he has been actively seeking work since 2016. Claimant could not provide a log of his job search over that course of time. Later in the hearing, claimant said he has not applied for jobs since the birth of his child. Towards the end of the hearing, claimant said he was essentially waiting for Ms. Dell to allow him to work again and has not been searching for work.

Claimant did provide self-certification that he was otherwise able to work and available for work but was unemployed, partially unemployed, or unable or unavailable because his place of employment closed due to Covid19. Telework was not available.

Claimant is ineligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC).

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the Iowa Workforce Development decision dated October 23, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is affirmed.

The CARES Act was established to provide PUA benefits to qualified individuals who were not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation. PL 116-136 Section 2102(a), (b), (c), (d), and (h) provide as follows:

SEC. 2102. PANDEMIC UNEMPLOYMENT ASSISTANCE.

(a) DEFINITIONS. — In this section:

(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— (I) 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

(II) 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 (I); 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)(I).

(b) ASSISTANCE FOR UNEMPLOYMENT AS A RESULT OF COVID– 19. —

Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Because claimant agreed to work "PRN" or as needed, and the wage history consists of on-call wages, he is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed.

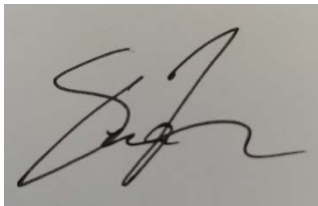
Claimant is not eligible for regular unemployment insurance benefits during the weeks Rosa Dell did not have work available.

Specifically, claimant was unable or unavailable to work because a lack of attachment to the labor market. Superficially, claimant appears to fall within three provisions of PL 116-136 Section 2102(a)(3)(A)(aa),(bb),(jj) and (ll). First, claimant maintains his circumstances fall under Section 2102(a)(3)(A)(jj) because Rosa Dell stopped assigning claimant work due to concerns about him transmitting Covid19 in the house. This is not a direct result from Covid19 as contemplated by Section 2102(a) because the business did not close due to a quarantine order. Even if it had been, claimant must be able, available and earnestly seeking work to maintain his eligibility for PUA.

Similarly, claimant superficially appears to fall within (aa) and (bb) because he claims he and his girlfriend became ill with Covid19. The issue here is that claimant would have likely been unemployed during those weeks regardless the symptoms of his illness or his girlfriend's illness because he was not seeking work or working at the time. This unemployment began on March 6, 2020 and continued until the date of the hearing. Claimant is not otherwise able to work and available for work within the meaning of applicable State law. Claimant is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation.

DECISION:

The Iowa Workforce Development decision dated October 23, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is affirmed.



Sean M. Nelson
Administrative Law Judge
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December 31, 2020
Decision Dated and Mailed

smn/scn