

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVAN MORRISON
Claimant

APPEAL 20R-DUA-00928-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 06/21/20
Claimant: Appellant (2)

PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance

STATEMENT OF THE CASE:

On August 21, 2020, Stevan Morrison (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated August 7, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA).

A hearing was held on October 1, 2020. Claimant participated personally. The administrative law judge determined claimant's appeal was untimely and therefore affirmed the decision denying benefits. Claimant appealed the decision to the Employment Appeal Board (EAB). The EAB reversed the decision finding the appeal untimely and remanded for a new hearing.

A telephone hearing was set for December 28, 2020. Claimant requested a continuance, which was granted. A hearing was held on January 25, 2021. The parties were properly notified of the hearing. The claimant participated personally and was represented by Attorney Amanda Richards.

Claimant's exhibits 1-8, 10-15, and 17 were admitted. 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 has worked as a business consultant for many years. In this position he consults on technology, management, organization and other issues for companies big and small. Claimant was working full-time in this position prior to the pandemic and was anticipating the undertaking of numerous large, long-term projects for clients around that time. However, several projects involving several clients were cancelled or indefinitely postponed due to the pandemic. Claimant's

business declined to zero on or about March 20, 2020. The lack of business has continued to date.

Claimant is unable to telework in his business. He has been otherwise able to and available for work. He is not eligible 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 August 7, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is REVERSED. Claimant is eligible for PUA from the benefit week ending March 28, 2020.

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. That period was subsequently extended through the week ending March 13, 2021 and, in some cases, through the week ending April 10, 2021. See Consolidated Appropriations Act of 2021. The issue to be determined here is whether claimant is a “covered individual” within the meaning of applicable law.

(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 U.S. Department of Labor has provided guidance on PUA eligibility to state workforce agencies. In Unemployment Insurance Program Letter No. 16-20, Change 2, the following guidance was issued:

b. Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16-20, Change 1, explains that an independent contractor who experiences a “significant diminution of work as a result of COVID-19” may be eligible for PUA.

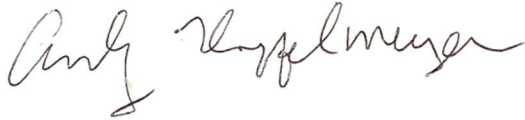
With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

The administrative law judge finds claimant is self-employed and is otherwise able to work and available for work within the meaning of applicable State law but is unemployed because of COVID-19. Specifically, claimant has experienced a significant diminution of work as a result of COVID-19. Claimant was working full-time prior to the pandemic and was anticipating the undertaking of numerous large, long-term projects for clients around that time. However, several projects involving several clients were cancelled or indefinitely postponed due to the pandemic. Claimant’s business declined to zero on or about March 20, 2020. The lack of business has continued to date.

Claimant is unable to telework in his business. He has been otherwise able to and available for work. He is not eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC).

DECISION:

The Iowa Workforce Development decision dated August 7, 2020 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is REVERSED. Claimant is eligible for PUA from the benefit week ending March 28, 2020.



Andrew B. Duffelmeyer
Administrative Law Judge
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February 10, 2021
Decision Dated and Mailed

abd/kmj