

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ELAINE M WHITING
Claimant

APPEAL NO. 21A-DUA-00144-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (1)

PL 116-136 Section 2102 – Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 3, 2020 decision that denied Pandemic Unemployment Assistance (PUA) benefits, based on the deputy's conclusion that the claimant did not meet the eligibility requirements. After due notice was issued, a hearing was held on February 6, 2021. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-DUA-00145-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative record of the claim for benefits, including NMRO, DBRO, KCCO, WAGE-A, KPYX, the PUA application, the PUA denial decisions, the deputy's note regarding PUA denial, and other correspondence with the claimant availability of benefits and expiration of benefits.

The administrative law judge left the hearing record open through February 9, 2021 for the limited purpose of allowing the claimant the opportunity to submit (1) complete work search log for the period beginning November 1, 2020, (2) medical documentation supporting the claimant's assertion that a doctor advised her to quarantine due to high risk in connection with the COVID-19 due COPD and (3) medical documentation regarding the impact of her February 2, 2021 foot surgery on her ability to work and availability for work. The claimant did not submit any of the requested materials for the administrative law judge's consideration.

ISSUE:

Is the claimant eligible for PUA?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was most recently employed as a part-time poultry cleaning production worker for Martzahn Poultry Processing. The claimant last performed work for the employer in July 2019. The claimant had no other employment in 2019 and has had no other employment since July 2019. The claimant has not been self-employed at any point since January 1, 2019. In July 2019, the claimant went off work due to a non-work related injury to her left elbow. The claimant had fallen, landed on her elbow, and chipped a bone in her elbow. The injury did not

require surgical intervention, but required time to heal. The claimant is right-handed. The claimant was released to return to work without restrictions in January 2020. The claimant attempted to return to the Martzahn employment at that time, but the employer declined to provide additional employment. The employer told the claimant the employer's worker's compensation carrier deemed the claimant too great a risk in light of her elbow injury, a prior diagnosis of carpal tunnel and a prior worker's compensation claim based on a workplace hand injury.

The claimant delayed filing for unemployment insurance benefits. The claimant filed an original claim for original benefits that was effective March 22, 2020. Iowa Workforce Development determined the claimant was monetarily eligible for benefits, set a \$77.00 weekly benefit amount, and disbursed regular benefits for the weeks between March 22, 2020 and June 20, 2020. The claimant exhausted regular benefits June 22, 2020. IWD then paid the claimant \$77.00 in weekly Pandemic Emergency Unemployment Compensation (PEUC) for the 13 weeks between June 21, 2020 and September 19, 2020. IWD then paid the claimant \$77.00 in weekly extended benefits for the six weeks between September 20, 2020 and October 31, 2020, at which time the Extended Benefits program expired.

As of October 31, 2020, the claimant had exhausted benefits.

On November 23, 2020, the claimant submitted an application for Pandemic Unemployment Assistance (PUA). The claimant indicated in her application for PUA that she had been laid off due to a medical condition, was released to return to work, and was told she no longer had a job. The claimant added that her health placed her at high risk if she got COVID-19. The claimant provided May 5, 2017 as her start date and July 5, 2019 as her last day of work. The claimant indicated that she had worked 30 hours per week prior to the COVID-19 pandemic. The claimant certified that she was able to work and available for work but for COVID-19.

On October 7, 2020, Iowa Workforce Development had mailed notice to the claimant indicating the claimant from that point forward required to make two job contacts per claim week. The claimant commenced reporting two job contacts per week when making her weekly claims.

The claimant has not kept the required job search log for the period beginning November 1, 2020. The claimant advises she has looked for work since that time and has documented "here and there." The claimant resides in Greene, Iowa. The claimant estimates the population of Greene at about 1000 people. The claimant's most recent employer was in Greene. Greene offers few other employment opportunities, aside from gas stations and similar businesses. The closest sizable communities are Mason City and Waverly. The claimant estimates the distance between Greene and the larger communities to be about 30 miles. The claimant has a 2005 van as personal transportation. The claimant has received no job offers.

The claimant's doctor advised her that she is at high risk in connection with the COVID-19 pandemic. The claimant was diagnosed with chronic obstructive pulmonary disease (COPD) in 2008. The claim uses two inhaler treatments per day. The claimant does not require tank oxygen. The claimant has not contracted COVID-19 and has not been exposed to COVID-19. The claimant lives with her boyfriend and two other adults. No one in the household has contracted COVID-19. There are not children in the household.

The claimant had surgery on February 2, 2021 to remove a painful cyst from the side of her ankle. The claimant currently cannot walk and has been advised not to stand on the affected foot. The claimant takes ibuprofen for pain. The claimant is scheduled to return for a follow up medical appointment on February 9, 2021.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(4)a provides:

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

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

The claimant was monetarily eligible for regular unemployment insurance benefits funded by the State of Iowa, but exhausted regular benefits effective June 20, 2020. The claimant exhausted all other non-PUA benefits effective October 31, 2020.

Public Law 116-136, the CARES Act, at Section 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. Section 2012 provides Pandemic Unemployment Assistance 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) and (c), 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.

(c) APPLICABILITY. —

(1) IN GENERAL. — Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual — (A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID–19— (i) beginning on or after January 27, 2020; and (ii) ending on or before December 31, 2020; and (B) subject to subparagraph (A)(ii), as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID–19 continues.

(2) LIMITATION ON DURATION OF ASSISTANCE.—The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 39 weeks and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after the date of enactment of this Act, the duration of extended benefits is extended, the 39-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

The claimant is not eligible for PUA benefits. The claimant cannot be considered for PUA benefits for any point prior to November 1, 2020, because she did not exhaust non-PUA benefits until October 31, 2020. The claimant failed to present sufficient evidence to establish that she has been able to work and available for work but for a COVID-19 since November 1, 2020, but for one of the qualifying reasons identified under section 2102(a)(3)(A)(ii)(I) of the CARES Act. The evidence indicates that claimant has not engaged in a meaningful search for work since November 1, 2020. The claimant has a recent non-COVID-19 related health issue that prevents her from working. The claimant presented insufficient proof to establish that she was advised by a health care provider to self-quarantine due to concerns related to COVID-19. The claimant did not separate from employment for one of the qualifying reasons identified under section 2102(a)(3)(A)(ii)(I) of the CARES Act.

DECISION:

The December 3, 2020 decision that denied Pandemic Unemployment Assistance (PUA) benefits is affirmed. The claimant is not eligible for PUA benefits.



James E. Timberland
Administrative Law Judge

February 25, 2021
Decision Dated and Mailed

jet/scn