

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FREDERICK HOUWEN
Claimant

APPEAL 21A-UI-11400-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/29/20
Claimant: Appellant (1)**

PL 116-136 Section 2102 – Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 16, 2021 unemployment insurance decision denied Pandemic Unemployment Assistance (PUA) benefits, and found that claimant was overpaid for Pandemic Unemployment Assistance (PUA) in the amount of \$10,759.00 for 52 weeks ending March 27, 2021.

The parties were properly notified of the hearing. A telephone hearing was held on September 16, 2021. The claimant participated personally. Daniel Noonan, Investigator II participated on behalf of IWD. IWD Exhibits 1-15 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for Pandemic Unemployment Assistance?
Is the claimant overpaid PUA for 52 weeks ending March 27, 2021?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed the application for PUA on for about July 1, 2020, and provided self-certification that he was otherwise able to work and available for work but was unemployed, partially unemployed, or unable or unavailable to work because of the pandemic. Telework was not available.

The claimant was granted Pandemic Unemployment Assistance benefits based on his assertions to the Agency. The decision was dated April 18, 2020. His weekly benefit amount was determined to be \$203.00. He received a total of \$10,759.00 in Pandemic Unemployment Assistance benefits for the fifty-two weeks ending March 27, 2021.

This matter was referred to the investigations and recovery unit of Iowa Workforce Development. Daniel Noonan was assigned to the investigation. Mr. Noonan was not able to verify the existence of the business entity claimant had reported to the department in his

application for benefits. A PUA audit packet was sent to the claimant by certified mail in attempt to obtain additional information about claimant's business.

A phone interview was conducted on or about April 16, 2021. During that interview Mr. Noonan tried to verify claimant's business. Mr. Noonan asked claimant if he had a license or any documentation to verify his business, and he asked for sales records or receipts. Mr. Noonan also asked claimant questions about his tax return.

Claimant indicated that he did not have any type of business license, and he was not registered with the State of Iowa. Claimant was not able to supply any receipts for business assets, or sales of goods. Claimant told Mr. Noonan that his business records had been destroyed by the Derecho.

Mr. Noonan concluded his investigation and determined that claimant did not have a legitimate business, and he therefore was not entitled to receive Pandemic Unemployment Assistance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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—

(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

(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).

An individual must be unemployed and the unemployment must be caused by a major disaster. 20 CFR 625.4.

Title 20 of the Code of Federal Regulations, section 626.2(t) defines an unemployed self-employed individual as follows:

(t) 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 as provided in § 625.5(b).

Title 20 of the Code of Federal Regulations, section 626.5(b) and (c) provide:

(b) Unemployed self-employed individual. The unemployment of an unemployed self-employed individual is caused by a major disaster if—

(1) The individual has a “week of unemployment” as defined in § 625.2(w)(2) following the “date the major disaster began” as defined in § 625.2(e), and such unemployment is a direct result of the major disaster; or

(2) The individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster; or

(3) The individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster; or

(4) The individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

(c) Unemployment is a direct result of the major disaster. For the purposes of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:

(1) The physical damage or destruction of the place of employment;

(2) The physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or

(3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

PL 116-136 Section 2102(a)(3)(A)(ii)(I) establishes that the claimant must provide self-certification that she is otherwise able to work and available for work within the meaning of applicable State law, except that she is unemployed, partially unemployed, or unable or unavailable to work **because of one of the enumerated reasons listed in (aa) through (II)**.

Claimant did not have a legitimate business, and he did not provide any receipts or business ledgers showing the existence of a business enterprise to the department. As a result Mr. Noonan made a decision with the information he had before him which showed that the claimant's business receipts did not match and appeared to be fictitious, and that the claimant had provided false information to the department. As such, Pandemic Unemployment Assistance benefits were denied.

Iowa Code § 96.3(7)a provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

In this case, the claimant filed for PUA benefits, but he did not properly self-certify as required. His failure to reveal his financial circumstances and to properly self-certify disqualifies him from receiving benefits. As such, Pandemic Unemployment Assistance benefits are denied.

The claimant received PUA payments of the 52 weeks ending March 27, 2021. As such, due to his ineligibility, the claimant has been overpaid PUA payments in the amount of \$10,759.00 for 52 weeks ending March 27. Those benefits must be repaid to the agency.

DECISION:

The Iowa Workforce Development decision dated April 16, 2021 that determined claimant was not eligible for federal Pandemic Unemployment Assistance (PUA) is affirmed. The claimant was overpaid Pandemic Unemployment Assistance (PUA) payments in the amount of \$10,759.00 for 52 weeks ending March 27, 2021. Those payments must be repaid to the agency. A penalty in the amount of 15% of the LWA overpayment was proper and the claimant must repay the penalty as well.



Duane L. Golden
Administrative Law Judge

September 29, 2021
Decision Dated and Mailed

dlg/ol