

**IOWA WORKFORCE DEVELOPMENT DEPARTMENT
UNEMPLOYMENT INSURANCE APPEALS SECTION
1000 EAST GRAND AVE
DES MOINES IA 50319**

**Appeal Number: 05A-DUA-00007-SWT
OC 05/19/04 R 02
Claimant: Appellant (1)**

**LARRY G LOKEN
4788 JUNIPER AVE
NORTHWOOD IA 50459**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**U S DEPARTMENT OF LABOR
ATTN LINDA SPITZENGEL
1100 MAIN ST SUITE 1050
KANSAS CITY MO 64105-2112**

**FEDERAL UNIT
ADMINISTRATIVE OFFICE**

ADMINISTRATIVE LAW JUDGE DECISION

20 CFR 625.4 - Unemployment Caused by a Major Disaster

STATEMENT OF THE CASE:

The claimant appealed a Disaster Unemployment Assistance (DUA) decisions made in his case that concluded the claimant was ineligible for DUA for the weeks ending July 24, July 31, August 7, August 28, October 2, October 16, and October 23, 2004, because he received income in excess of the income limitation. A telephone hearing was held on May 23, 2005. The claimant participated in the hearing. Exhibits A-1 and A-2 were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant filed an application for DUA with an effective date of May 19, 2004. His weekly benefit amount was determined to be \$273.00. During the weeks ending July 24, July 31, August 7, August 28, October 2, October 16, and October 23, 2004, the claimant sold grain or cattle and had gross income from those sales of over his weekly benefit amount.

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. 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. "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).

Pursuant to 20 CFR § 625.6(f)(2), the weekly amount of DUA payable to an unemployed self-employed individual for a week of unemployment shall be the weekly benefit amount reduced by the full amount of any income received during the week for the performance of services in self-employment, regardless of whether or not any services were performed during the week. The term "any income" for purposes of this paragraph (f)(2) means gross income.

Applying these rules to the present case, the claimant's gross income from the sale of livestock and grain was over his maximum earnings allowance during the weeks in question. He, therefore, is not eligible for DUA benefits for those weeks. While the claimant argued that the grain sold was raised in 2003 and the livestock income was affected by the disaster conditions, the law makes no such distinctions. I have no authority to ignore the rules, which clearly provide for the deduction of gross income derived from self-employment during the week in which the income is received.

DECISION:

The DUA decisions denying the claimant benefits are affirmed. The claimant is ineligible to receive DUA benefits for the weeks ending July 24, July 31, August 7, August 28, October 2, October 16, and October 23, 2004.

Steven A. Wise
Administrative Law Judge

saw:sjd

Copies dated and mailed:

cc: To all parties of record.

This decision shall become final unless an appeal is filed within fifteen (15) days from the date of this decision to the following address:

U.S. Department Of Labor
Attn: Linda Spitzengel
1100 Main Street Suite 1050
Kansas City MO 64105-2112

State clearly the following in the appeal:

- (1) The name, address and social security number of the claimant.
- (2) A reference to the decision from which the appeal is taken.
- (3) The grounds upon which the appeal is based.