

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MARVIN J LINCOLN
Claimant

APPEAL NO. 08A-DUA-00006-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FEDERAL UNIT
ADMINISTRATIVE OFFICE**

**OC: 05/25/08 R: 01
Claimant: Appellant (4)**

20 CFR 625.4 - Unemployment Caused by a Major Disaster

STATEMENT OF THE CASE:

The claimant appealed a Disaster Unemployment Assistance (DUA) decision dated July 17, 2008, that concluded the claimant was ineligible to receive DUA because the claimant was not unemployed as a result of a major disaster. A telephone hearing was held on August 11, 2008. The claimant participated in the hearing. Exhibit A-1 and A-2 were admitted into evidence at the hearing. Based on the evidence, the arguments of the claimant, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

ISSUE:

Is the claimant unemployed as a result of a major disaster?

FINDINGS OF FACT:

The claimant filed an application for DUA on June 17, 2008, with an effective date of May 25, 2008. The claimant is a self-employed farmer. The claimant has an 80-acre farm in Buchanan County, Iowa, which was declared a major disaster area. He raises corn on the farm. As of May 25, in a normal year, the claimant would be working full time cultivating and spraying his crops.

The claimant planted 80 acres of corn. Starting in May 2008, disaster conditions in the form of heavy rains caused flooding on the claimant's farm and damage to the crops. The disaster conditions caused approximately 25 percent of the claimant's crops to be lost completely or severely damaged.

As of May 25, 2008, the claimant was unable to perform his customary full-time hours spraying and cultivating his crops due to the weather and soil conditions. After approximately June 28, 2008, conditions had improved sufficiently that the claimant was able to resume the customary hours of work on the farm.

The claimant normally starts harvesting his crops at the end of September and finishes all his fall fieldwork, including after harvest tillage and cleanup by the end of November.

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).

The claimant has not demonstrated sufficient damage to his crops to warrant an award of DUA throughout the crop season. The claimant has, however, established weeks in which he was totally or partially unemployed due to the disaster as defined by the DUA regulations. The claimant is eligible to receive DUA benefits for the period between May 25 and June 28, 2008, provided he is otherwise qualified.

If the claimant has any weeks during the fall harvest season from September 28 through November 29, in which he is working less than customary full time hours because of crop losses due to disaster conditions, he must file continued requests for DUA that explain why he believes he is unemployed due to the disaster. The Agency will decide if he is working less than his customary hours on a week-by-week basis.

DECISION:

The DUA decision dated July 17, 2008, is modified in favor of the claimant. The claimant is eligible to receive DUA benefits for the period between May 25 and June 28, 2008, provided he is otherwise qualified.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css