

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROLINE L BERTRAND**  
Claimant

**APPEAL NO. 08A- DUA-00051-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

FEDERAL UNIT  
ADMINISTRATIVE OFFICE

**OC: 06/08/08 R: 03**  
**Claimant: Appellant (1)**

20 CFR 625.4 - Unemployment Caused by a Major Disaster

**STATEMENT OF THE CASE:**

Caroline Bertrand appealed a Disaster Unemployment Assistance (DUA) decision dated October 22, 2008, that concluded she was ineligible to receive DUA effective July 6, 2008, because she was no longer unemployed as a result of a major disaster. A telephone hearing was held on November 17, 2008. Bertrand participated in the hearing with witnesses, Jerry Fisher, Jordon Long, and Mabel Banwell.

**ISSUE:**

Is Bertrand unemployed as a direct result of a major disaster?

**FINDINGS OF FACT:**

Caroline Bertrand filed an application for DUA on September 26, 2008, with an effective date of June 8, 2008. Her weekly benefit amount was determined to be \$147.00.

Bertrand is a self-employed nurserywoman who owns "The Perennial Farmer Farm" which consists of 4.2 acres in Chickasaw County, Iowa. The county was declared a major disaster area in 2008. She raises rare and common perennial and select annual flowers and plants in her business. As of June 8 in a normal year, Bertrand would be working full time maintaining the plants, grounds, and flower beds; selling her plants to customers; and providing information to customers about flower gardening.

From approximately June 8, 2008, to July 5, 2008, disaster conditions in the form of heavy constant rains prevented Bertrand from performing her normal full time duties of caring for her plants. Her land was not flooded, and there was no substantial damage to her plants, buildings, or other structures. The business remained physically accessible.

As of approximately July 6, 2008, weather conditions had improved sufficiently so Bertrand was able to resume her customary full time work caring for her plants, maintaining the grounds, and waiting on the customers. Sales of plants, however, continued to be substantially lower than in past years because of the disaster conditions in the surrounding areas which caused the

customer traffic to be reduced as many potential customers were focused on cleaning up after the disaster.

#### **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 Agency awarded DUA benefits to Bertrand during weeks (June 8 through July 5) when the Agency determined she was unable to perform her customary full-time work as a direct result of the heavy rains, which were the disaster conditions cited in the disaster declaration for Chickasaw county

Bertrand asserts she should continue to received DUA benefits after July 5, 2008, despite the lack of direct losses to her plants or damage to her property because her business suffered economic losses due to the lack of customer traffic, which was caused by the disaster conditions in the surrounding areas. First, The DUA program is an unemployment program and is not a program that directly compensates individuals for economic losses. Second, a loss due to a reduction in customers visiting the nursery does not establish any unemployment as a direct result of a disaster; it is an example of an indirect result. The *Disaster Unemployment Assistance Technical Assistance Guide* p. 17 (Iowa Workforce Development – January 1997), the Agency explains:

If the business .. is physically unaffected by the disaster but simply loses a portion of its customers because of disaster conditions, in most cases the owner is not unemployed due to a disaster because the owner stands ready and could perform all their customary services and activities. ... Only if the business were damaged and shut down due to the disaster, or unable to operate because of a disaster-caused failure in utilities, or totally inaccessible to customer due to the disaster, would the owner have potential eligibility for DUA benefits.

This guidance is persuasive and supports my conclusion that Bertrand was no longer eligible for DUA benefits, as the Agency decided, effective July 6, 2008. While Bertrand's situation is personally compelling, an administrative law judge is required to apply the law and rules as they are written, and not rewrite them to achieve a desirable outcome.

**DECISION:**

The DUA decision dated October 22, 2008, that concluded Caroline Bertrand was ineligible to receive DUA effective July 6, 2008, is affirmed.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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