

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUANE L PETERSON
Claimant

APPEAL NO. 08A-DUA-00031-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL UNIT
ADMINISTRATIVE OFFICE

OC: 05/25/08 R: 01
Claimant: Appellant (1)

20 CFR 625.4 - Unemployment Caused by a Major Disaster
20 CFR 625.2(t) - Principal Source of Income and Livelihood

STATEMENT OF THE CASE:

The claimant appealed a Disaster Unemployment Assistance (DUA) decision dated July 25, 2008, that concluded the claimant was ineligible to receive DUA because the claimant was not unemployed as a result of a major disaster since his principal source of income and livelihood was not dependent on self-employment. A telephone hearing was held on September 29, 2008. The claimant participated in the hearing. Exhibits A was 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's principal source of income and livelihood dependent on self-employment?

FINDINGS OF FACT:

The claimant filed an application for DUA on July 1, 2008, with an effective date of May 25, 2008. The claimant has a 1,500-acre farm in Webster County, Iowa, which was declared a major disaster area. Claimant also farms 80 acres outside of Webster County which is not of sufficient size to affect DUA benefits. The claimant raises corn and soybeans on the farm. Disaster conditions, including heavy rains, damaged the crops resulting in replanting of 160 acres and decreased yield. Claimant was unable to work May 25, 2008 through June 21, 2008.

Claimant operates the farming concern as a corporation. Claimant leases his own land to the corporation. The same corporation leases farm land from others. Claimant sells all crops in the corporation name. Claimant then takes rent from the corporation. Claimant receives a small salary in the winter months of \$3,200.00 a year. Claimant does not receive any income in his own name as a self employed farmer.

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 and the individual is an "unemployed self-employed individual". 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 due to the disaster. "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).

An "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. 20 CFR § 625.2(t). A "self-employed individual" means an individual whose primary reliance for income is on the performance of services in the individual's own business or on the individual's own farm. 20 CFR § 625.2(n).

Under the U.S. Department of Labor's (DOL) interpretation, the major objective of the DUA program is to enable compensation to be paid to those persons who might lose their livelihood because of destruction or loss in a major disaster. This intent has generally been interpreted to require that an individual's activities, the loss of which is claimed to have resulted in unemployment, must have been the individual's principal source of income and means of livelihood and must be reasonably equivalent to those occupational activities by which other individuals in the area earn their livelihood. Disaster Unemployment Assistance (DUA), ET Handbook No. 356, p. II-9 (Oct. 1977).

The claimant's principal source of income and livelihood is not dependent on farming. The claimant's income from leasing to the corporation is the primary source of funds. Furthermore, the claimant is in a different situation than an individual whose primary source of income and livelihood depends on self-employment because he is a shareholder of the corporation. Claimant does not receive a salary that was suspended during the disaster. Claimant does not sell any grain in his own name. This is a corporate farming operation and not self employment.

The DUA program is an unemployment program and is not a program that directly compensates individuals for economic losses. Benefits are payable to farmers who rely on farming for their principal source of income for weeks when they cannot do their normal work or work less than their normal hours because of disaster conditions. The claimant is not unemployed as a direct result of a major disaster and is not eligible to receive DUA benefits because he leases his land to a corporation and sells all the crops in the corporate name. The business entity is a corporation and not a self employed farmer.

DECISION:

The DUA decision dated July 25, 2008, is affirmed. The claimant is not eligible to receive DUA benefits his principal source of income and livelihood is not dependent upon the performance of services in self employment.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs