

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

**APRIL M HAWLEY
810 – 5TH AVE SW
SPENCER IA 51301-5619**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL NO. 21A-DUA-01665-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within 15 days from the mailing date below the administrative law judge's signature on the last page of this decision, you or any interested party:

Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
OR
Fax Number: (515)281-7191***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:
The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.
That an appeal from such decision is being made and such appeal is signed.
The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:
A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-claimant-handbook>

Employer UI Handbook: <https://www.iowaworkforcedevelopment.gov/employer-handbook>

Report UI fraud: <https://www.iowaworkforcedevelopment.gov/report-fraud>

Employer account access and information: <https://www.myowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

APRIL M HAWLEY
Claimant

APPEAL NO. 21A-DUA-01665-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/15/20
Claimant: Appellant (1R)

PL 116-136 Section 2102 – Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 22, 2020 decision that denied Pandemic Unemployment Assistance (PUA) benefits, based on the deputy's conclusion that the claimant did not meet the eligibility requirements. After due notice was issued, a hearing was held on August 5, 2021. The claimant participated. Exhibit A, the online appeal, was received into the hearing record. The administrative law judge took official notice of Agency administrative records pertaining to the claimant's claim for benefits, including DBRO, KCCO, KPYX, WAGE-A, NMRO, the monetary record, the application for PUA benefits, the Assessment for PUA Eligibility, the deputy's notes regarding the denial of PUA, the March 2, 2021, reference 01, decision, the administrative law judge decision in Appeal Number 21A-UI-07070-JC-T. The administrative law judge also took official notice of the Spencer Community School District's website.

The administrative law judge left the hearing record open until August 12, 2021 for the limited purpose of allowing the claimant the opportunity to submit the following documentation: (1) medical documentation of COVID-19 diagnoses, quarantine, and recovery with relevant dates, (2) U.S. Cellular payroll records for the claimant for the period of January 1, 2019 through January 2, 2021, (3) 2019 and 2020 complete tax returns, and (4) documentation of correspondence regarding cancellations attributed to COVID-19. The claimant did not provide the requested materials.

ISSUE:

Is the claimant eligible for PUA?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 15, 2020. The claimant's three minor, dependent children were included in the claim. The base period for the purposes of regular benefits consisted of the fourth quarter of 2018 and the first, second, and third quarters of 2019. United States Cellular (U.S. Cellular) is the sole base period employer. Throughout the base period and until early January 2021, the claimant was employed by U.S.

Cellular as a part-time Retail Wireless Consultant. Prior to COVID-19 becoming a factor in employment as of mid-March 2020, the claimant worked 25 hours per week. The claimant received a \$17.21 hourly wage plus commission. The job duties involved selling wireless products and services to retail customers at a retail store.

The base period wages for purposes of the claim for regular benefits consisted of the following:

<u>Quarter</u>	<u>Wages</u>
2018/4	\$16,909.99
2019/1	\$10,871.87
2019/2	\$11,237.21
2019/3	\$15,907.39

Based on the base period wages, Iowa Workforce Development set a weekly benefit for regular benefits at \$545.00 and a maximum benefit amount of \$14,170.00. The quarterly wages, weekly benefit amount and maximum benefit amount were included in the “monetary determination” (green paper) IWD mailed to the claimant.

U.S. Cellular reported paying the claimant \$20,169.00 in wages during the fourth quarter of 2019.

On or about March 17, 2020, the employer temporarily closed the retail store where the claimant performed her work duties. The closure was in response to Governor Reynolds’ March 17, 2020 State of Public Health Disaster Emergency in which the Governor directed non-essential retail establishments to close in order to slow community spread of COVID-19. The employer continued to pay the claimant her wages for a 25-hour work week (\$430.25) and additional biweekly compensation based on an average of the claimant’s prior commissions. The retail store reopened its doors in late May or early June 2020, but did so under COVID-19 based restrictions on the number of staff and customers that could be in the store, and additional social distancing measures. The employer continued to pay the claimant wages for a 25-hour work week (\$430.25) and additional biweekly compensation based on an average of the claimant’s prior commissions. The claimant was not able to perform her sales duties from home. COVID-19-based restrictions continued in one form or another in the workplace through the end of 2020. U.S. Cellular reported 2020 quarterly wages paid to the claimant as follows:

<u>Quarter</u>	<u>Wages</u>
2020/1	\$12,629
2020/2	\$14,048
2020/3	\$15,528
2020/4	\$11,242

The 2020 quarterly wages reported by U.S. Cellular amount to first quarter average weekly wage of \$971.00, a second quarter average of \$1,080.00, a third quarter average of \$1,194.00, and a fourth quarter average of \$864.00. The amounts are well above the \$545.00 weekly benefit amount set forth in the “monetary determination.”

After the claimant established her March 15, 2020 original claim for benefits, she made weekly claims for each of the weeks between March 15, 2020 and January 2, 2021. The claimant consistently under-reported wages from the employment as follows:

PAYMENT-RECORDS..		
<u>BWE-DATE</u>	<u>RPT-CODE</u>	<u>AMT-RP</u>
03/21/20	OVER15	442.00
03/28/20	OVER15	442.00
04/04/20	OVER15	442.00
04/11/20	OVER15	442.00
04/18/20	OVER15	442.00
04/25/20	OVER15	442.00
05/02/20	OVER15	442.00
05/09/20	OVER15	442.00
05/16/20	OVER15	442.00
05/23/20	OVER15	442.00
05/30/20	OVER15	442.00
06/06/20	OVER15	442.00
06/13/20	OVER15	442.00
06/20/20	OVER15	442.00
06/27/20	OVER15	442.00
07/04/20	OVER15	477.00
07/11/20	OVER15	354.00
07/18/20	OVER15	477.00
07/25/20	OVER15	459.00
08/01/20	OVER15	459.00
08/08/20	OVER15	459.00
08/15/20	OVER15	459.00
08/22/20	OVER15	459.00
08/29/20	OVER15	479.00
09/05/20	OVER15	442.00
09/12/20	OVER15	442.00
09/19/20	OVER15	459.00
09/26/20	OVER15	442.00
10/03/20	OVER15	442.00
10/10/20	OVER15	459.00
10/17/20	OVER15	442.00
10/24/20	OVER15	442.00
10/31/20	OVER15	459.00
11/07/20	OVER15	459.00
11/14/20	OVER15	229.00
11/21/20	OVER15	422.00
11/28/20	OVER15	442.00
12/05/20	OVER15	459.00
12/12/20	OVER15	459.00
12/19/20	OVER15	459.00
12/26/20	OVER15	459.00
01/02/21	OVER15	424.00

The wages the claimant reported were consistently under the \$545.00 weekly benefit amount, though the claimant's actual wages were substantially higher than the \$545.00 weekly benefit

amount. Based on the weekly claims and the wages reported by the claimant, IWD paid partial regular benefits to the claimant for each of the weeks between March 15, 2020 and January 2, 2021. For each of the weeks between March 29, 2020 and July 25, 2021, Iowa Workforce Development also paid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC). For each of the weeks between July 26, 2020 and September 5 2020, IWD also paid \$300.00 in Lost Wage Assistance Payment (LWAP). For the week that ended January 2, 2021, IWD also paid \$300.00 in FPUC benefits.

On March 2, 2021, Iowa Workforce Development Benefits Bureau issued a reference 01 decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that the claimant continued to be employed same hours and wages as in the original contract of hire and, therefore, could not be deemed partially unemployed. The claimant appealed the reference 01 decision. On May 26, 2021, an administrative law judge entered a decision in Appeal Number 21A-UI-07070-JC-T that affirmed the reference 01 disqualification decision. The claimant did not appeal the administrative law judge's decision and the decision became final.

In March or April 2019, the claimant and a business partner located in Texas established a business, Movement21 Empowerment, L.L.C. (M21). Through the business, the claimant and her partner planned to provide afterschool program content designed to facilitate and enhance communication between parents and their children. Through the business, the claimant and her partner also planned a one-day "Women's Summit" to take place in Spencer in March 2020. The business was still getting off the ground at the end of 2019. The business received a single \$8,000.00 payment for afterschool programming services.

At the time, COVID-19 became a factor in the business in mid-March 2020, the claimant and her partner had provided one afterschool program event 2020. The programming was directed at students in Texas. The claimant appeared by Zoom video-conference while her partner appeared in person in Texas. The claimant and her partner were unable to go forward with additional afterschool programming and schools in Texas and Iowa shut down in-person classes to prevent spread of COVID-19. The approximate \$8,000.00 payment the claimant's business received in 2019 is contingent upon the claimant and her partner providing make-up afterschool programming when COVID-19 circumstances allow.

The claimant's business had to cancel the Women's Summit planned for the latter part of March 2020 due to COVID-19. The claimant had expected about 200 participants, including participants traveling from out of state to attend the one-day conference in Spencer. The claimant had secured the venue and had "reserved" accommodations. The claimant's company refunded the \$99.00 ticket price to participants. The claimant was able to escape paying a \$2,000.00 deposit for food. The claimant had prepared 200 "swag bags" for participants, with the expectation that a \$2,000.00 grant from the City of Spencer would reimburse her for her out of pocket purchase. However, because the in-person event could not go forward, the claimant did not receive the grant. The claimant's business reported a \$5,919.00 loss when the claimant filed her 2020 taxes.

The claimant submitted her initial application for Pandemic Unemployment Assistance (PUA) benefits on June 29, 2020. The claimant reported in the application that her business was "not able to work because we work with the schools, so when they open back up we can go back." The claimant attached a 2019 IRS e-file Signature Authorization for Form 1065 signed by her certified public accountant (C.P.A.). The form indicates \$8,103.00 in "Gross receipts or sales

less returns and allowances,” \$8,103 in “Gross profit,” and \$1,412.00 in ordinary business income. The claimant made no reference to the U.S. Cellular employment or her family circumstances in the June 29, 2020 PUA application.

The claimant submitted a second PUA application on May 27, 2021. The claimant again focused on her self-employment business venture, but made brief reference to the U.S. Cellular employment. The claimant did not mention her family circumstances. The claimant attached 2019 and 2020 Schedule E (form 1040 or 1040-SR) that each contained information regarding Movement21 Empowerment, L.L.C. The 2019 form indicated total income of \$706.00. The 2020 form indicated a \$5,919.00 loss.

The claimant closed Movement21 Empowerment, L.L.C. effective December 31, 2020 in conjunction with her acceptance of a full-time position with U.S. Cellular.

The claimant’s household consists of the claimant and her 16, 14 and 12-year-old children. All three children attend school in the Spencer Community School District. The 2019-2020 school year effectively ended for all three children in mid-March 2020, when Spencer schools closed in-person classes to slow community spread of COVID-19. The 2019-2020 school year officially ended on Friday, May 29, 2020. The claimant’s children did not participate in virtual/remote learning for the remainder of the school year.

The 2020-2021 school year began on August 24, 2020. The school year started with the Districting using a hybrid curriculum, whereby her children attended in-person classes for a portion of the school week and participated in virtual/remote learning for the remainder of the week. The claimant believes this continued into December, at which time the District opened for full-time in-person classes.

The claimant advises that she and her family had two encounters with the COVID-19 virus during 2020. The claimant cannot pinpoint the relevant dates for the first experience, but estimates that encounter, a period of quarantine, occurred sometime between July and September 2020. The claimant advises that she and her children were ill with COVID-19 from the start of November 2020 until November 21, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(4)(a) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the

base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

The claimant was "monetarily eligible" for regular unemployment insurance benefits, based on her base period wages, but was disqualified for those benefits effective March 15, 2020 pursuant to the March 2, 2021, reference 01, decision that held she was not partially unemployed. Accordingly, the claimant may be deemed to have exhausted regular benefits effective March 15, 2020.

Public Law 116-136, the CARES Act, at Section 2102, provides for unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020 and ending on or before December 31, 2020, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19. Section 2012 provides Pandemic Unemployment Assistance PUA benefits to qualified individuals who were not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation. PL 116-136 Section 2102(a), (b) and (c), provide as follows:

SEC. 2102. PANDEMIC UNEMPLOYMENT ASSISTANCE.

(a) DEFINITIONS. — In this section:

(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).

(b) ASSISTANCE FOR UNEMPLOYMENT AS A RESULT OF COVID-19. —

Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

(c) APPLICABILITY. —

(1) IN GENERAL. — Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual — (A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19— (i) beginning on or after January 27, 2020; and (ii) ending on or before December 31, 2020; and (B) subject to subparagraph (A)(ii), as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID-19 continues.

(2) LIMITATION ON DURATION OF ASSISTANCE.—The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 39 weeks and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after the date of enactment of this Act, the duration of extended benefits is extended, the 39-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

The claimant is not eligible for PUA benefits because the evidence in the record establishes that the claimant was not unemployed or partially unemployed within the meaning of the law at any

point from the time she established the March 15, 2020 original claim. This is because the employer continued to compensate the claimant for her regular work and the compensation exceeded, by hundreds of dollars per week, the \$545.00 regular weekly benefit amount and the maximum possible weekly PUA benefit amount. In light of the ongoing employment and compensation for employment, the circumstances pertaining to the claimant's self-employment venture make no difference, are moot, in connection with the PUA eligibility determination.

DECISION:

The June 22, 2020, decision that denied Pandemic Unemployment Assistance (PUA) benefits is affirmed. The claimant is not eligible for PUA benefits.

This matter is **remanded** to the Investigations & Recovery Unit for further action as the Unit deems appropriate.



James E. Timberland
Administrative Law Judge

November 4, 2021
Decision Dated and Mailed

jet/scn