

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRODY BOSTON
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-DUA-00476-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/20
Claimant: Appellant (2)

PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance

STATEMENT OF THE CASE:

Brody Boston, the claimant/appellant, filed an appeal from the Iowa Workforce Development decision dated December 23, 2020 that determined he was not eligible for Pandemic Unemployment Assistance (PUA) benefits. Mr. Boston was properly notified of the hearing. A telephone hearing was held on March 8, 2021, at 4:00 p.m. Mr. Boston participated in the hearing. Official notice was taken of the administrative record.

ISSUE:

Is Mr. Boston eligible for Pandemic Unemployment Assistance (PUA) benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Boston was self-employed as a life insurance agent. His business was a sole proprietorship and he was paid only on commission. He began his business in May 2019 when he graduated from college.

Mr. Boston did paperwork at his office and met with clients and prospective clients in their homes to sell life insurance. The demographic Mr. Boston targeted were people age 65 and older. Mr. Boston worked with a mentor. The mentor was compensated on his commission and worked with the life insurance companies.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. Due to the pandemic Mr. Boston's mentor told him not come into the office. Mr. Boston was unable to meet with clients in their homes due to their concerns about the pandemic. Mr. Boston attempted to do virtual meetings with clients and prospective clients instead of in-person meetings but that was not successful. Before the pandemic, Mr. Boston averaged 20-30 new clients per month. Mr. Boston got two new clients in the month of March. About ten percent of Mr. Boston's clients cancelled their already placed orders due to financial hardship due to the pandemic.

Mr. Boston has not had any COVID-19 symptoms. Mr. Boston's sister tested positive for COVID while she was on a trip. Mr. Boston went to live with his parents before his sister returned from her trip. Mr. Boston has not been advised by a medical professional to self-quarantine. Mr. Boston does not provide care for any children or adults. Mr. Boston has not been scheduled to commence a new job that was cancelled due to COVID-19. None of Mr. Boston's suppliers have closed due to COVID-19. Mr. Boston began new employment in February 2021.

Mr. Boston is not eligible for regular unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, Sec. 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.

The issue to be determined here is whether claimant is a "covered individual" who is eligible to receive benefits within the meaning of applicable law.

Section 2102 of the CARES Act describes a covered individual as follows:

(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).

The United States Code authorizes the Secretary of the United States Department of Labor to enter into agreements with states to administer Pandemic Unemployment Assistance (PUA) benefits under the CARES Act. PL 116-136, Sec. 2102(f). The United States Department of Labor has issued operating instructions to states in implementing section 2102 of the CARES Act. Iowa Code § 96.11 mandates that Iowa Workforce Development “shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter. . .” When implementing section 2102, the operating instructions direct states to first consult section 2102 of the CARES Act and then the operating instructions. When both are silent, states should refer to section 625 of title 20, Code of Federal Regulations. When consulting the regulations, the term “COVID-19 public health emergency” is to be substituted for the term “major disaster” and the term “pandemic is to be substituted for the term “disaster.”

In the Department of Labor’s Unemployment Insurance Program Letter No. 16-20, Change 2, it states

b. Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16-20, Change 1, explains that an independent contractor who experiences a “significant diminution of work as a result of COVID-19” may be eligible for PUA.

With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

In this case, Mr. Boston experienced a significant diminution of services because of the COVID-19 pandemic health emergency and is therefore eligible for PUA benefits under subsection (kk) effective November 8, 2020. Mr. Boston must make weekly continued claims in order to receive benefits.

DECISION:

The Iowa Workforce Development decision dated December 23, 2020 that determined Mr. Boston was not eligible for Pandemic Unemployment Assistance (PUA) benefits is reversed. Mr. Boston is eligible for PUA benefits effective November 8, 2020 pursuant to subparagraph (kk).



Daniel Zeno
Administrative Law Judge
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March 11, 2021
Decision Dated and Mailed

dz/lj