

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENDA CHEATHAM
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL NO. 24A-DUA-00016-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**Disaster Declaration Date: 05/22/24
OC: 06/02/24
Claimant: Appellant (1)**

20 CFR 625.4 - Unemployment Caused by a Major Disaster

STATEMENT OF THE CASE:

On July 9, 2024, Brenda Cheatham (claimant) appealed a Disaster Unemployment Assistance (DUA) decision dated June 26, 2024, that concluded the claimant was ineligible to receive DUA because the claimant was not unemployed as a result of a major disaster. After appropriate notice to the claimant, an appeal hearing was held on July 31, 2024. Claimant participated. Claimant Exhibits A, B and C and Department Exhibits D1 through D-4 were received into evidence. The administrative law judge took official notice of the May 22, 2024 State of Iowa Executive Department Proclamation of Disaster Emergency.

ISSUE:

Is the claimant eligible to receive DUA benefits?

FINDINGS OF FACT:

Brenda Cheatham (claimant) filed an application for Disaster Unemployment Assistance (DUA) on June 17, 2024, in connection with a June 2, 2024 original claim date. Ms. Cheatham has made consecutive weekly claims since June 2, 2024.

Ms. Cheatham is a semi-retired, self-employed cosmetologist. Until recently, Ms. Cheatham operated a hair salon from her home in Urbandale, Polk County, Iowa. Ms. Cheatham estimates that she spent about 15 to 20 hours per week in the self-employment venture until storm events in mid-May 2024. Ms. Cheatham's 2023 gross receipts from the part-time self-employment venture totaled \$26,750.00. Ms. Cheatham's 2023 net profit from the part-time self-employment venture totaled \$10,816.00. During the first quarter of 2023, Ms. Cheatham worked part-time for Cric, Ltd., doing business as Great Clips, as a part-time hair stylist for which work the employer paid Ms. Cheatham \$2,525.78. Ms. Cheatham had no other employment and no other wages since separating from Cric/Great Clips during the first quarter of 2023. Ms. Cheatham has not provided documentation of her 2024 gross receipts or net profit from the part-time self-employment venture. Ms. Cheatham's self-employment venture primarily serves elderly clientele. Ms. Cheatham's service to her clients includes transporting some clients from their home to Ms. Cheatham's home and transporting those same clients back to their homes.

On or about May 17, 2024, Ms. Cheatham was transporting a client when her 2015 Honda Accord suffered hail damage during a severe weather event. The vehicle was damaged cosmetically but there were no broken windows and the vehicle remained fully operable. As Ms. Cheatham entered her home during the storm, she dropped her cell phone. The phone remained lost until Ms. Cheatham located it outside her door several days later. Ms. Cheatham then replaced the phone. Ms. Cheatham's home, including the salon, suffered no damage in connection with weather events and remained fully operable. Transportation to and from Ms. Cheatham's home-based salon was not hindered in any way by weather events.

On May 22, 2024, Governor Kim Reynolds issued a Proclamation of Disaster Emergency for several counties, including Polk County. The Proclamation cited a series of severe storm systems commencing on May 20, 2024 as the basis for the Proclamation. The Proclamation indicated it would continue for 30 days and would expire on June 21, 2024 unless sooner terminated or extended in writing by the Governor.

Ms. Cheatham asserts the May 2024 storms adversely impacted her home-based salon business. Ms. Cheatham asserts that clients are less inclined to want to travel to her salon in light of the recent inclement weather. Ms. Cheatham also asserts, without a factual basis for doing so, that after the May 2024 storms clients lack funds for haircare services because they have to direct those funds toward storm recovery or other activities.

There is no substantial proof that disaster conditions caused the claimant to be unable to perform her customary self-employment or caused the claimant's hours of self-employment to be substantially reduced.

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 direct 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).

20 CFR § 625.5(b) and (c), regarding unemployment caused by a major disaster, provides as follows:

(b) Unemployed self-employed individual. The unemployment of an unemployed self-employed individual is caused by a major disaster if—

(1) The individual has a "week of unemployment" as defined in § 625.2(w)(2) following the "date the major disaster began" as defined in § 625.2(e), and such unemployment is a direct result of the major disaster; or

(2) The individual is unable to reach the place where services as a self-employed individual are performed, as a direct result of the major disaster; or

(3) The individual was to commence regular services as a self-employed individual, but does not have a place or is unable to reach the place where the services as a self-employed individual were to be performed, as a direct result of the major disaster; or
(4) The individual cannot perform services as a self-employed individual because of an injury caused as a direct result of the major disaster.

(c) Unemployment is a direct result of the major disaster. For the purposes of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:

(1) The physical damage or destruction of the place of employment;

(2) The physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or

(3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

Ms. Cheatham is not eligible for DUA benefits. The part-time nature of the self-employment venture would not exclude Ms. Cheatham from consideration for DUA benefits. See 20 CFR § 625.6(b)(1) (regarding calculation of a DUA weekly benefit amount based on a history of part-time work). However, Ms. Cheatham presented insufficient evidence to establish a lack of work or loss of revenue directly caused by a weather-related disaster. Ms. Cheatham presented no financial documentation regarding 2024 gross receipts or net receipts from the part-time self-employment. Ms. Cheatham's testimony regarding the amount of time she dedicated to the part-time self-employment prior to the May 2024 storm event(s) is vague and evolving. In Ms. Cheatham's June 2024 DUA application, she asserted the self-employment venture was full-time, which she defined as "30 plus" hours per week. During her testimony, Ms. Cheatham first asserted she spent 20 hours a week in the venture and then settled on 15 to 20 hours a week. Ms. Cheatham did not document the amount of time she spent in the part-time self-employment venture, so any assertion of the number of work hours spent in the self-employment is unreliable. Ms. Cheatham's request for DUA benefits does not satisfy any of the eligibility factors set forth in 20 CFR § 625.5(b) and (c), above. Ms. Cheatham retreated in her testimony from the July 3, 2024 appeal letter assertion that her car was damaged in a tornado such that she would not be able to use it to collect and transport clients. Ms. Cheatham asserts, without a reliable factual basis for the assertion, that the May 2024 weather-related disaster had an indirect impact on her part-time self-employment because people do not want to spend as much money on haircare services.

The claimant has not demonstrated that she has been unable to perform her customary hours of work due to the disaster. The claimant is ineligible to receive DUA benefits because she was not unemployed due to the disaster.

DECISION:

The DUA decision dated June 26, 2024 is **AFFIRMED**. The claimant is ineligible to receive DUA benefits.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

August 8, 2024
Decision Dated and Mailed

r/s

This decision will become final unless the party receiving the decision appeals to the Regional Administrator within fifteen (15) calendar days after the mailing date of this decision. The appeal must be in writing and signed by the appealing party. **The appeal should be mailed to: Attn: Regional Administrator, DOL-ETA Region 5 Chicago, 230 South Dearborn Street, 6th Floor, Chicago, IL 60604 or faxed to (312) 596-5401.**