

**IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA**

No. 30041

DARCY BRACKEN,

Appellant,

vs.

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION,
REEMPLOYMENT ASSISTANCE DIVISON,**

Appellee.

**Appeal from the Circuit Court
Seventh Judicial Circuit
Custer County, South Dakota
The Honorable Joshua K. Hendrickson, Presiding Judge**

BRIEF OF APPELLANT

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Notice of Appeal Filed June 29, 2022

Oral Argument Requested

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PRELIMINARY STATEMENT

Citations to the settled record in this matter appear as “SR.,” followed by the page number assigned by the Custer County Clerk of Courts in its indices. References to documents included in the Appendix to the Appellant’s Brief will be denoted as “Appellant’s App.,” followed by the assigned document number. A copy of the following transcript is included in the Appendix of this Brief:

- The May 26, 2022, administrative appeal hearing before the Honorable Joshua K. Hendrickson.

JURISDICTIONAL STATEMENT

Appellant Darcy Bracken (Bracken) appeals from the May 26, 2022, oral decision and subsequent May 31, 2022, Order entered by the Circuit Court in the matter entitled 16 CIV. 21-000092, in the Seventh Judicial Circuit, the Honorable Joshua K. Hendrickson presiding, which affirmed the Decision and Order of the ALJ dated October 20, 2021, finding that Bracken was ineligible to receive federal Pandemic Unemployment Assistance Benefits. Appellant App. 78-80, 82. Notice of Entry of Order was filed on May 31, 2022. SR. 141. Notice of Appeal was timely filed on June 29, 2022. SR. 146.

STATEMENT OF THE ISSUES

- 1) Whether the Circuit Court erred in affirming the ALJ’s Decision that Bracken was ineligible to receive Pandemic Unemployment Assistance Benefits (PUA benefits) under the federal CARES Act.

The ALJ ruled Bracken was ineligible to receive PUA benefits under the CARES Act because her bed and breakfast business only suffered “indirect economic consequences” caused by the COVID-19 public health emergency. As a result, the ALJ ordered Bracken to repay \$14,080 in PUA benefits she had previously received. On appeal, the Circuit Court affirmed the ALJ’s decision.

Most Relevant Authority

- 15 U.S.C. § 9021(a)(3)(A)(ii)(I)
- Unemployment Insurance Program Letter No. 16-20, Changes 4 and 5
- *In the Matter of Hayat Muse*, 956 N.W.2d 1, 4 (Minn. Ct. App. 2021)
- *Slama v. Landmann Jungman Hosp.*, 2002 S.D. 151, ¶ 5, 654 N.W.2d 826, 827–28

STATEMENT OF THE CASE

On October 20, 2021, the Administrative Law Judge, the Honorable Gerald McCabe presiding, entered his Decision and Order finding that Bracken was not eligible for federal PUA Benefits and must repay \$14,080 she had received. Appellant's App. 47-51. Bracken appealed this ruling to the Secretary of the Department of Labor, the Honorable Marsha Hultman, who affirmed the Department's Decision in its entirety on November 17, 2021. Appellant's App. 63. Notice of Appeal of the ALJ's Decision and Secretary Hultman's affirmance was filed with the Circuit Court on or about December 3, 2021. SR 1.

On May 26, 2022, the Circuit Court, the Honorable Joshua K. Hendrickson presiding, issued his oral decision affirming the ALJ and Secretary Hultman. Appellant's App. 78-80. The Circuit Court subsequently entered its Order affirming the ALJ and Secretary Hultman on May 31, 2022. Appellant's App. 82. Bracken, who was acting *pro se* through these proceedings, then retained legal counsel for this matter and a Notice of Appeal was filed on June 29, 2022. SR. 146.

STATEMENT OF FACTS

Appellant Darcy Bracken (Bracken) owned and operated the White Tail Ridge Bed and Breakfast, LLC, in Hermosa, South Dakota, for nine years. SR. 94. The

business was small, offering three guest rooms and a cabin. *Id.* Bracken and her husband ran the business together and also lived at the bed and breakfast. *Id.*

When the COVID-19 pandemic occurred in 2020, Bracken's business was devastated. While she did not close the business, it was significantly and negatively impacted due to cancellations of reservations. Appellant's App. 10.

On April 20, 2020, Bracken applied for federal Pandemic Unemployment Assistance benefits (PUA benefits) through the South Dakota Department of Labor (DOL). Appellant's App. 14. PUA benefits were created through a federal program established by the Coronavirus Aid, Relief, and Economic Security (CARES Act) to provide unemployment assistance benefits to individuals whose employment was negatively impacted by the COVID-19 health emergency. In her application for PUA benefits, Bracken stated as follows:

I am self-employed (including an independent contractor or gig worker) and experienced a significant reduction of services because of the COVID-19 public health emergency. I own a small bed and breakfast. The travel industry has been hit very hard by COVID-19 *so we have no business due to it.*

Appellant's App. 16 (emphasis added).

Bracken's application was approved by DOL, and she received \$14,080 in PUA benefits for the time-period from March 7, 2020, through August 8, 2020. Appellant's App. 19-41. Bracken relied on the PUA benefits to make ends meet in 2020. Appellant's App. 10.

On January 8, 2021, roughly four months after Bracken stopped applying for and receiving benefits, DOL emailed her and advised that her "request for Pandemic Unemployment Insurance Assistance is currently being reviewed." Appellant's App. 42.

In this email, Bracken was asked by DOL to respond to a series of questions, which she answered on the same day. Appellant's App. 43. In her response to DOL, Bracken advised as follows about how her business was affected by COVID-19:

COVID-19 practically shut down travel nationwide and locally. As an accommodation, we were greatly affected by this. We had a reduction in reservations, and practiced travel industry practices to close rooms for days in between guests. Our expenses were higher due to CDC recommended cleaning protocols.

Id.

On January 25, 2021, DOL mailed Bracken a Notice of Determination and Overpayment. Appellant's App. 5. In this notice, DOL advised that Bracken had "obtained reemployment assistance benefits to which you were not entitled..." in the amount of \$14,080. *Id.* The notice further advised that while Bracken was "without fault" in receiving these benefits, the alleged overpayment "must be repaid." *Id.*

On January 25, 2021, Bracken was also mailed a "Determination Notice" by DOL. Appellant's App. 3. This notice advised that "[b]ased on our investigation and the available information, you are not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified under section 2102(a)(3)(A)(ii)(I) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act." *Id.* This notice advised Bracken of her right to appeal. *Id.*

Bracken subsequently appealed these adverse determinations on February 4, 2021 to the ALJ. Appellant's App. 10. In her appeal letter, Bracken advised, in part, as follows:

The travel industry was hit hard by the pandemic. We had far fewer guests in 2020, had to take extreme measures to protect ourselves and guests from the virus, which also increased our expenses. The business ended the year with a loss rather than a profit for 2020 and therefore I

made \$0 in income. I relied on the income from the unemployment compensation to make ends meet. Looking for other work was not an option as I still needed to run the business.

Appellant's App. 10.

Following an evidentiary hearing, the Administrative Law Judge issued a ruling finding in favor of DOL and against Bracken. Appellant's App. at 47. In so ruling, the ALJ acknowledged the CARES Act allows self-employed individuals experiencing a significant diminution in their customary or usual services to be eligible for PUA benefits. Appellant's App. at 49. The ALJ also acknowledged that Bracken's business experienced a loss of business due to the pandemic. *Id.*

With respect to the bed and breakfast losing business due to the pandemic, the ALJ entered the following findings of fact:

3. In February 2020, Claimant's business had no new reservations and many reservations from prior bookings were cancelled.
4. Claimant's business had no guests until the end of May 2020.

Appellant's App. 47. Regardless, the ALJ ruled against Bracken for the following reason:

The evidence does not establish that Claimant meets any of the reasons for eligibility identified under the CARES Act. Although Claimant's business experienced a loss of guests during the COVID-19 pandemic, the evidence suggests that the reason for the loss of guests is because of indirect economic consequences from the COVID-19 public health emergency. Reductions in the number of guests or a decreased demand for bed and breakfast rooms is, without more, properly considered an indirect result of the COVID-19 public health emergency. Claimant's business was not closed by a state or local order. Claimant was neither required to self-quarantine nor was Claimant diagnosed with COVID-19. Claimant's business remained open despite the lack of bookings. Claimant is ineligible to receive Pandemic Unemployment Assistance, commencing March 1, 2020, because Claimant is not considered unemployed, partially unemployed, or unable or unavailable to work for one for the qualifying reasons under the CARES Act.

Appellant's App. 49.

Bracken, acting *pro se*, ultimately appealed the ALJ's ruling to the Circuit Court. During the appeal hearing, the Circuit Court affirmed the ALJ's ruling. The Circuit Court stated that its ruling "leaves a bad taste in my mouth" but felt compelled to do so because of the standard of review. Appellant's App. 78. According to the Circuit Court, "[t]hat's not because I think they're right and I think you are wrong. I probably – if I was making the decision at the general level there I might be more on your side than not, but the standard of review on the appellate issue is a clearly erroneous standard and I have to apply that to what's before the Court on this instance." *Id.*

Thereafter, Bracken retained legal counsel and this appeal followed.

STANDARD OF REVIEW

In administrative appeals, the standard of review was concisely summarized in

Clausen v. N. Plains Recycling:

Factual findings are reviewed under the clearly erroneous standard. Using this standard, we do not search the record to reverse. Unless we are left with a definite and firm conviction that a mistake has been made, we will uphold Department's factual determination.

Department's conclusions of law are reviewed de novo. Mixed questions of law and fact are also fully reviewable.

2003 S.D. 63, ¶ 7, 663 N.W.2d 685, 687 (citations omitted).

Mixed questions of law and fact require further analysis:

If application of the rule of law to the facts requires an inquiry that is "essentially factual"—one that is founded "on the application of the fact-finding tribunal's experience with the mainsprings of human conduct"—the concerns of judicial administration will favor the [lower tribunal], and the [lower tribunal's] determination should be classified as one of fact reviewable under the clearly erroneous standard. If, on the other hand, the question requires us to consider legal concepts in the mix of fact and law and to

exercise judgment about the values that animate legal principles, then the concerns of judicial administration will favor the [reviewing] court, and the question should be classified as one of law and reviewed de novo.

Manuel v. Toner Plus, Inc., 2012 S.D. 47, ¶ 8, 815 N.W.2d 668, 670 (cleaned up and citations omitted).

ARGUMENT

I. The ALJ and Circuit Court erred in determining that Bracken was ineligible to receive PUA benefits because the COVID-19 health emergency only caused her business to suffer an “indirect economic consequence.”

This case presents one legal issue: whether the ALJ and Circuit Court correctly applied applicable provisions of the CARES Act to the undisputed evidence when determining Bracken was ineligible for PUA benefits. A review of the applicable law demonstrates the ALJ erred in its legal analysis by injecting the concept of “indirect economic consequence” into its decision. This concept is simply not contained within the CARES Act or guidance provided to the states for applying the applicable provisions of the CARES Act. For this reason, the decision of the ALJ, and the Circuit Court’s subsequent affirmance, should be reversed.

A. The CARES Act and Applicable Law.

To be eligible for PUA benefits, a claimant must be a “covered individual” under the CARES Act. *See* 15 U.S.C. § 9021(b). A “covered individual” is one who is “not eligible for regular compensation or extended benefits under State or Federal law or pandemic unemployment compensation.” *Id.*

As correctly described in the ALJ’s decision and order, an individual qualifies for PUA benefits under the CARES Act in the following circumstances:

- (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.***

15 U.S.C. § 9021(a)(3)(A)(ii)(I); Appellant's App. 48-49 (emphasis added).

The United States Department of Labor has also provided guidance to the states for administering the PUA program in a series of Unemployment Insurance Program Letters (U.I.P.L. letters). In this regard, and as noted correctly by the ALJ, the United States Secretary of Labor has established four additional criteria under its authority granted in section (kk) above as follows:

1. *Self-employed individuals who experience a significant diminution in their customary or usual services because of the COVID-19 public health emergency;*
2. Individuals who refuse to return to work that is unsafe or accept an offer of new work that is unsafe;
3. Certain individuals providing services to educational institutions or educational service agencies; and
4. Individuals experiencing a reduction of hours or a temporary or permanent layoff.

Appellant's App. 48-49. U.I.P.L. No. 16-20, Change 4, U.I.P.L., No. 16-20, Change 5 (emphasis added). Notably, the CARES Act does not include the phrase "indirect economic consequence" when describing who is entitled to receive benefits under 15 U.S.C. § 9021(a)(3)(A)(ii)(I).

B. The ALJ and Circuit Court Erred in Finding Bracken was Ineligible for PUA Benefits and Must Repay the Amount She Received Because She Had Suffered An "Indirect Economic Consequence" Caused by the Pandemic.

Here, it is undisputed that Bracken's bed and breakfast was financially devastated by the pandemic. The ALJ specifically found that prior to the pandemic, Bracken's business "regularly had guests each month." Appellant's App. 47, Finding of Fact 2. Beginning in February 2020, the ALJ found the bed and breakfast had no new reservations, many pending reservations were cancelled, and no new guests came to the

business until the end of May 2020. Appellant's App. 47, Findings of Fact 3 and 4.

Moreover, Bracken herself has stated in the record that her business "made \$0 income" in 2020 due to the pandemic, and that "COVID-19 practically shut down travel nationwide and locally." Appellant's App. 10, 43.

Despite this overwhelming and uncontested evidence demonstrating that the pandemic caused these issues, the ALJ inexplicably ruled that Bracken was ineligible for PUA benefits because COVID-19 only resulted in an "indirect economic consequence" to her business. This ruling is factually clearly erroneous. There is no evidence supporting the claim that COVID only "indirectly" harmed Bracken's business. To the contrary the evidence clearly shows the COVID-19 pandemic directly harmed Bracken's business.

Moreover, it also runs afoul of the plain language of the CARES Act, and the Circuit Court erred by affirming it. As noted above, self-employed individuals are entitled to PUA benefits under section "kk" of the CARES Act if they "experience a significant diminution in their customary or usual services because of the COVID-19 public health emergency." U.I.P.L. No. 16-20. Change 4, U.I.P.L., No. 16-20, Change 5; Appellant's App. at 48-49. This legal principle is undisputed. The CARES Act does *not* provide, however, that a court must conduct some type of legal analysis on the amorphous phrase "indirect economic consequences" when determining PUA eligibility. Instead, a court should interpret the law as written and determine whether a claimant such as Bracken experienced a "significant diminution" in her business because of the pandemic. Here, as established in the record, Bracken's business did experience a significant diminution in business because of the pandemic, and for that reason she is entitled to benefits under section "kk" of 15 U.S.C. § 9021(a)(3)(A)(ii)(I).

When interpreting a federal statute such as the CARES Act, a reviewing court must “give effect to the will of Congress.” *In the Matter of Hayat Muse*, 956 N.W.2d 1, 4 (Minn. Ct. App. 2021) (quoting *Griffin v. Oceanic Contractors, Inc.* 458 U.S. 564, 570 (1982)). Moreover, this Court has instructed that “[w]ords and phrases in a statute must be given their plain meaning and effect. When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court's only function is to declare the meaning of the statute as clearly expressed.” *Slama v. Landmann Jungman Hosp.*, 2002 S.D. 151, ¶ 5, 654 N.W.2d 826, 827–28 (quotation omitted).

Here, as evidenced by plain statutory language, the will of Congress is for claimants such as Bracken to receive PUA benefits from the CARES Act in order to combat the financial devastation caused by COVID-19. Indeed, the “PUA program extended economic assistance to people who lost work due to the pandemic but would not be eligible for regular unemployment compensation benefits, such as “gig economy” workers who are ineligible for regular unemployment benefits because they are classified as independent contractors and not employees.” *Matter of Muse*, 956 N.W.2d 1, 3 (Minn. Ct. App. 2021) (citing U.I.P.L. 16-20, Attachment 1, at 1-6; U.I.P.L. 16-20, Change 1 (April 27, 2020), at 1-8.)). The plain language of the CARES Act allows Bracken to receive PUA benefits, and the ALJ and Circuit Court erred by finding otherwise.

Notably, on appeal to the Circuit Court, DOL conceded in its brief it was unaware of any caselaw supporting the ALJ’s interpretation of section “kk” of 15 U.S.C. § 9021(a)(3)(A)(ii)(I). SR 133, Appellee’s Brief at 6. Appellant is also not aware of any caselaw supporting the position of the ALJ, and the ALJ cited no supporting caselaw in its Decision. Instead, Bracken respectfully submits that a straight-forward application of

the plain language in the CARES Act leads to the inevitable conclusion that Bracken is entitled to PUA benefits. To put it simply, the bed and breakfast suffered a significant diminution in its business because of COVID-19. Bracken is entitled to PUA benefits because of this significant diminution of her business. She should not be ordered to repay \$14,080 in benefits she needed to survive and rightfully received.

Moreover, the ALJ's ruling also runs afoul of the concept that remedial statutes such as the CARES Act should be broadly construed to help remedy the defect it was intended to address. "Remedial legislation' implies an intention to reform or extend existing rights. The purpose of remedial legislation is to promote justice and advance the public welfare and important and beneficial public objects." 73 Am. Jur. 2d Statutes § 7. "Courts liberally, or broadly, construe remedial statutes in order to help remedy the defects in the law that prompted their enactment." 3 Sutherland Statutory Construction § 60:1 (8th ed.). *See also Moody v. L.W. Tyler and Custom Combiners*, 297 N.W.2d 179, 180 (S.D. 1980) (stating the workmen's compensation act "is remedial, and should be liberally construed to effectuate its purpose.") (citations omitted).

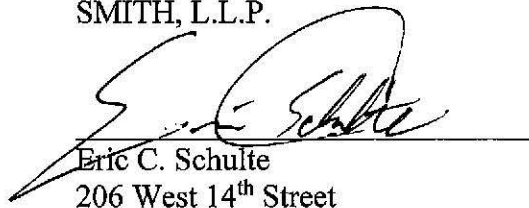
Here, Congress passed the CARES Act to help alleviate the financial devastation caused by the COVID-19 pandemic. Accordingly, Bracken respectfully submits this Court should liberally construe the CARES Act's provisions in favor of claimants like her, who had to endure the damage caused by COVID and relied on the money provided by the CARES Act to literally survive. Indeed, it is undisputed Bracken was completely without fault in filing for and receiving benefits. Appellant's App. 5. Under these circumstances, it would be manifestly unjust for Bracken to repay the \$14,080 she rightfully sought and desperately needed to make ends meet in 2020.

CONCLUSION

The ALJ erred in finding that Bracken was not eligible for PUA benefits under the CARES Act. The Circuit Court likewise erred in affirming the ALJ's decision. Indeed, one would be hard pressed to find a scenario that more squarely fits within the Labor Secretary's criteria (1) for interpreting section (kk) of the CARES Act. Bracken's business was devastated by the pandemic. The ALJ erred in injecting the concept of "indirect economic consequence" into its analysis and application of law. The ALJ's findings, which were affirmed by the Circuit Court, are clearly erroneous and constitute a misapplication of the law. The ALJ's and Circuit Court's rulings should be reversed and Bracken should be held eligible for PUA benefits.

Dated at Sioux Falls, South Dakota, this 14th day of November, 2022.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.



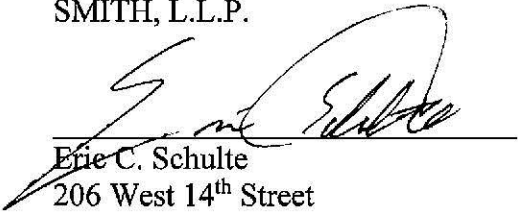
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Attorneys for Appellant

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests oral argument.

Dated at Sioux Falls, South Dakota, this 14th day of November, 2022.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.



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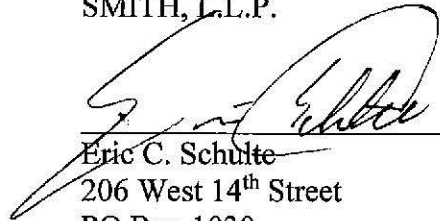
Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Brief of Appellant complies with the type volume limitations set forth in SDCL 15-26A-66. Based on the information provided by Microsoft Word 365, this Brief contains 3,238 words and 20,537 characters, excluding the table of contents, table of authorities, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel. This Brief is typeset in Times New Roman (12 point) and was prepared using Microsoft Word 365.

Dated at Sioux Falls, South Dakota, this 14th day of November, 2022.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.



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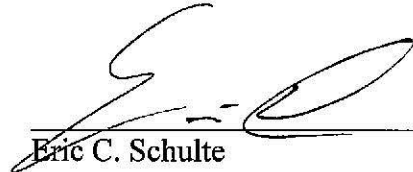
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing "Brief of Appellant" was filed electronically with the South Dakota Supreme Court and that the original of the same was filed by mailing the same to 500 East Capital Avenue, Pierre, South Dakota, 57501-5070, on 14th November, 2022.

The undersigned further certifies that an electronic copy of "Brief of Appellant" was emailed to the attorneys set forth below, on 14th November, 2022:

Seth A. Lopour
Woods, Fuller, Schultz & Smith. P.C.
300 South Phillips Ave., Suite 300
Sioux Falls, SD 57117-5027
Attorneys for Appellee

on this 14th day of November, 2022.



Eric C. Schulte

APPENDIX

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STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF CUSTER

SEVENTH JUDICIAL CIRCUIT

DARCY BRACKEN,

Claimant/Appellant,

16 CIV. 21-000092

VS.

SOUTH DAKOTA DEPARTMENT OF
LABOR AND REGULATION,
REEMPLOYMENT ASSISTANCE DIVISION,

CERTIFICATE AND
AFFIDAVIT OF SERVICE
BY MAIL

Agency/Appellee.

CERTIFICATION

I, Pauline Heier, Director of the Reemployment Assistance Division of the South Dakota Department of Labor and Regulation, do hereby certify that the enclosed records of the Administrative Proceedings and Decisions are true and correct copies of the written record of this proceeding upon review.

A handwritten signature in black ink, reading "Pauline Heier", written over a horizontal line.

Pauline Heier

Director

South Dakota Department of Labor and Regulation
Reemployment Assistance Division

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH DAKOTA

COUNTY OF BROWN

Deserae Husby, being first duly sworn, on oath deposes and states: That she is a Program Assistant I for the Reemployment Assistance Division of the South Dakota Department of Labor and Regulation.

That on this 6 day of January, 2022, affiant served a true and correct copy of the entire record of this proceeding under review upon all parties by securely sealing a true copy thereof in an envelope by US mail with postage fully prepaid to the following:

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Custer, SD 57730
Claimant/Appellant

Woods, Fuller, Shultz & Smith
Seth Lopour
PO Box 5027
Sioux Falls, SD 57117
Attorney for Agency/Appellee

Deserae Husby

Deserae Husby, Program Assistant I
South Dakota Department of Labor and Regulation
Reemployment Assistance Division

Subscribed and sworn to before me this 6th day of January, 2022.

Misty Harr
Notary Public, South Dakota

My Commission Expires: 01-13-2022



SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

Reemployment Assistance Division
420 S. Roosevelt PO Box 4730
Aberdeen, South Dakota 57402-4730
(605) 626-2452 FAX (605) 626-3172
<http://www.sdjobs.org>

DETERMINATION NOTICE

DARCY L BRACKEN
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APPEAL RIGHTS:

This determination is final unless you file an appeal in writing on or before 2/9/2021. Your appeal rights are further explained on the reverse side of this form.

Issue: PUA Ineligible

DETERMINATION: Based on information available, it is determined:

You are held ineligible commencing 03/01/2020. Based on our investigation and the available information, you are not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified under section 2102(a)(3)(A)(ii)(I) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Employer

REEMPLOYMENT ASSISTANCE DIVISION

BY SLS

DATE 01/25/2021 Electronic

**NOTE: IMPORTANT INFORMATION ON
THE REVERSE SIDE OF THIS FORM**

Claimant Copy

CLAIMANT INFORMATION — Please read carefully

The determination on the front of this form is based on information supplied by you when you applied for benefits and/or facts provided by a former employer. Please review the DETERMINATION carefully. If you do not understand the determination contact Customer Service at 605-626-2452. Reemployment Assistance benefit information is available at <http://www.RAclaims.sd.gov>.

PROVISIONS OF THE REEMPLOYMENT ASSISTANCE LAW OF SOUTH DAKOTA

ELIGIBILITY REQUIREMENTS: To be entitled to benefits, a claimant must: (see Section 61-6-1)

1. Register for work and thereafter continue to report at a South Dakota Department of Labor and Regulation local office or your designated state work force agency as directed.
2. File an application for benefits.
3. Be able to work and be available for work. Available for work has been interpreted to mean that individuals will make a reasonable effort to find work on their own, and are willing to accept suitable work at the going wage in the area where they reside.

DISQUALIFICATIONS: A claimant will be disqualified:

1. If the claimant refuses to accept suitable work without good cause. See Section 61-6-16;
2. If the claimant voluntarily leaves work without good cause. See Section 61-6-9;
3. If the claimant is discharged by an employer because of misconduct connected with the work. See Section 61-6-14.

A claimant who willfully or fraudulently misrepresents any fact to secure or increase benefits may be denied benefits for a period of up to 52 weeks commencing with the date the fraudulent act is discovered. See Section 61-6-39.

South Dakota Codified Laws are available at <http://legis.state.sd.us/statutes/index.aspx> or call Customer Service. Administrative Rules of South Dakota are available at <http://legis.state.sd.us/rules/index.aspx> or call Customer Service.

SERVING DISQUALIFICATIONS: To satisfy any of the above disqualifications you must be re-employed at least six calendar weeks in insured employment during your current benefit year and earn wages of not less than your weekly benefit amount in each of those six weeks and then separate from your employment under nondisqualifying circumstances.

APPEAL RIGHTS:

An appeal is filed by mailing or faxing a letter of appeal to:

Appeal Section, Reemployment Assistance Division
P.O. Box 4730
Aberdeen, SD 57402-4730

FAX# 605-626-2322

The appeal must be mailed or faxed on or before 2/9/2021.

The appeal must state the reasons for appealing and include the social security number.

If you are appealing a determination, you should continue to file your weekly requests for payment. If the decision is in your favor you will receive payment for the weeks you filed requests.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
Reemployment Assistance Division
420 S Roosevelt St - P O Box 4730 - Aberdeen SD, 57402-4730
http://www.sdjobs.org

NOTICE AND DETERMINATION OF OVERPAYMENT

DARCY L BRACKEN
 24674 WHITE TAIL RID
 HERMOSA SD 57744-5100

APPEAL/WAIVER RIGHTS:

This determination is final and repayment is required. If you believe this determination is incorrect, you have the right to file an appeal and/or request a waiver on or before **2/9/2021**. Your rights are further explained on the reverse side of this form.

TOTAL OVERPAYMENT \$14,080.00

You have obtained reemployment assistance benefits to which you were not entitled as shown below.
This overpayment and any penalty amount must be repaid.

| <u>WEEK ENDING</u> | <u>PAID</u> | <u>AMOUNT OF BENEFITS</u> | <u>OVERPAID</u> |
|--------------------|-------------|---------------------------|-----------------|
| 03/07/2020 | \$ 172.00 | | \$ 172.00 |
| 03/14/2020 | \$ 172.00 | | \$ 172.00 |
| 03/21/2020 | \$ 172.00 | | \$ 172.00 |
| 03/28/2020 | \$ 172.00 | | \$ 172.00 |
| 04/04/2020 | \$ 772.00 | | \$ 772.00 |
| 04/11/2020 | \$ 772.00 | | \$ 772.00 |
| 04/18/2020 | \$ 772.00 | | \$ 772.00 |
| 04/25/2020 | \$ 772.00 | | \$ 772.00 |
| 05/02/2020 | \$ 772.00 | | \$ 772.00 |
| 05/09/2020 | \$ 772.00 | | \$ 772.00 |
| 05/16/2020 | \$ 772.00 | | \$ 772.00 |
| 05/23/2020 | \$ 772.00 | | \$ 772.00 |
| 05/30/2020 | \$ 772.00 | | \$ 772.00 |
| 06/06/2020 | \$ 772.00 | | \$ 772.00 |
| 06/13/2020 | \$ 772.00 | | \$ 772.00 |
| 06/20/2020 | \$ 772.00 | | \$ 772.00 |
| 06/27/2020 | \$ 772.00 | | \$ 772.00 |
| 07/04/2020 | \$ 772.00 | | \$ 772.00 |
| 07/11/2020 | \$ 753.00 | | \$ 753.00 |
| 07/18/2020 | \$ 715.00 | | \$ 715.00 |

You were not at fault. Repayment will be required unless you request and are granted a waiver to the department's right to recover this overpayment.

ClaimantID: 222691

Page 1 of 2

DATE OF MAILING: 01/25/2021 Electronic

NOTE: Important information on the reverse side of this form.

APPEAL RIGHTS

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Appeal Section Reemployment Assistance Division
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- The appeal must be mailed or faxed on or before the date notated on the front.
- The appeal must state the reasons for appealing and include the claimant ID #.
- If you are appealing a determination, you should continue to file your weekly request for payment.

WAIVER REQUEST

A waiver may be requested if you feel you don't have the ability to repay the overpayment. In determining the ability to repay, the department will consider family income and liquid assets available to the claimant and the claimant's spouse.

- A request to have an overpayment waived is filed in the same way as an appeal.
- The request must state why you believe the recovery of the overpayment should be waived.
- Requests for waiver must be made within 15 days after notice of overpayment. **ARSD 47:06:04:22**

FRAUD - Collecting Reemployment Assistance (RA) benefits based on providing false, misreported, or unreported information to the SD Department of Labor and Regulation is considered committing reemployment assistance fraud. You could face the following penalties for committing fraud:

- **Monetary Penalty** - a 50% penalty of the amount of benefits obtained for the first offense and a 100% penalty of benefits for each subsequent offense. **SDCL 61-6-39**
- **Administrative Penalty** -an administrative penalty of four weeks for each week that fraud was committed to secure or increase benefits. If eligible, you should continue to file a weekly request for payment. You will not receive benefits for the designated penalty weeks as it will be applied to your administrative penalty. **ARSD 47:06:04:28**
- Prosecution by government authorities, possible prison sentences or forfeiture of future income tax refunds.

CIVIL ACTIONS - South Dakota law allows for the filing of junior and general liens, issuance of distress warrants and civil action to aid in the collection of monies owed to the state. **SDCL 61-6-41, SDCL 61-5-62, SDCL 61-5-66, SDCL 61-5-59**

INTEREST - Interest is applied at 12 percent per year from the date of the determination of overpayment. Interest cannot be offset from future benefits. **SDCL 61-6-44**

LEGAL REFERENCES - South Dakota Codified Laws are available at http://sdlegislature.gov/Statutes/Codified_Laws.
Administrative Rules of South Dakota are available at <http://sdlegislature.gov/Rules>.

AMOUNT OF BENEFITS

WEEK ENDING

PAID

OVERPAID

07/25/2020

\$ 772.00

\$ 772.00

08/01/2020

\$ 172.00

\$ 172.00

08/08/2020

\$ 172.00

\$ 172.00

You were not at fault. Repayment will be required unless you request and are granted a waiver to the department's right to recover this overpayment.

ClaimantID: 222691

Page 2 of 2

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Administrative Rules of South Dakota are available at <http://sdlegislature.gov/Rules>.

REPAYMENT INFORMATION

- The amount you owe as an overpayment must be paid as follows:
 - o by check, money order or cashier's check made payable and mailed to:
Collections
PO Box 4730
Aberdeen, SD 57402-4730
 - o debit or credit card by phone or mail
 - o Automatic payments - call 605.626.7649 for authorization form
 - o Online at www.dlr.sd.gov/ra from a checking or savings account. Click on "Reemployment Assistance for Individuals" then "LOG IN HERE to Make a Payment" to sign in.
- If you are currently filing weekly requests for payment, any eligible benefit payments will be used to reduce the amount of overpayment.

QUESTIONS - Contact our office at 605.626.7649, Monday-Friday, 8 a.m. - 5 p.m. CST

Please mail stub below with your payment so your account is correctly credited or pay online. **Do Not Send Cash.**

SD UNEMPLOYMENT INSURANCE DIVISION
ATTENTION: Collections
PO Box 4730
Aberdeen, SD 57402-4730

Claimant ID Number: **222691**

PLEASE COMPLETE PAYMENT INFORMATION

CREDIT CARD

☐ **MASTERCARD** ☐ **DISCOVERY** ☐ **VISA** ☐ **AMERICAN EXPRESS**

Card Number _____ Expiration Date _____ Security Code _____

Signature _____ Dollar Amount _____

CHECK - Make Check payable to SD Unemployment Insurance Division

Check No. _____ Amount Paid _____

When you make a check payment you authorize us to use information from your check to make a one-time electronic fund transfer from your account. When we use information from your check to make an electronic funds transfer, funds may be withdrawn from your account as soon as the same day we receive your payment. You will not receive your check back from your financial institution.

9

DARCY L BRACKEN
24674 WHITE TAIL RID
HERMOSA SD 57744-5100

To change your billing address, print your change of address below.

Address _____ Phone _____

City _____ State _____ Zip _____

APP 009

24674 White Tail Ridge Rd.
Hermosa, SD 57744
605-939-5831
Claimant ID: 222691

February 4, 2021

Appeal Section
Reemployment Assistance Division
PO Box 4730
Aberdeen, SD 57402-4730
Fax: 605-626-2322

Subject: Request for Appeal re PUA Ineligibility

I hereby file this appeal regarding your determination of my ineligibility to receive unemployment compensation under PUA of the CARES Act.

I am eligible for unemployment compensation under section 2102(a)(3)(A)(ii)(III) of the CARES Act as I was self-employed in 2020.

I own a small business, White Tail Ridge Bed & Breakfast, LLC (SD Corp ID DL026926). I do not earn a salary from the business and taxable income is calculated as revenue – expenses. I only earn an income if the business earns a profit.

The travel industry was hard hit by the pandemic. We had far fewer guests in 2020, had to take extreme measures to protect ourselves and guests from the virus, which also increased our expenses. The business ended the year with a loss rather than a profit for 2020 and therefore I made \$0 income. I relied on the income from the unemployment compensation to make ends meet. Looking for other work was not an option as I still needed to run the business.

I did complete the weekly claims to the best of my ability. However, I found them confusing and some questions irrelevant to a self-employed worker.

Please contact me if further information is necessary.

Sincerely,



Darcy Bracken

The UPS Store®

1430 Haines Ave. Ste. 108
Rapid City, SD 57701
605.343.2211 Tel
605.343.0605 Fax
store3912@theupsstore.com
theupsstorelocal.com/3912

Fax

To Appeal Section

Company Reemployment Assist. Div.

Fax number 605-626-2322

Date 2/4/2021

From Darcy Bracken

Phone number 605-939-5831

Fax number —

Total pages 2 (include cover sheet)

**SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
REEMPLOYMENT ASSISTANCE APPEALS DIVISION**

IN THE MATTER OF

**DARCY BRACKEN, CLAIMANT
AND
SOUTH DAKOTA REEMPLOYMENT ASSISTANCE
DIVISION, AGENCY**

**NOTICE OF HEARING
APPEAL NO. 82394**

An administrative hearing will be held by telephone conference on **October 14, 2021, at 1:30 pm Central Time, 12:30 pm Mountain Time.**

To begin this hearing **YOU** must call **1.800.530.6205** at the scheduled time and enter the conference pin number **82394** when prompted. Have the enclosed numbered documents and all other documents submitted by the parties available for the hearing. If a party feels an interpreter is needed for the hearing, you may notify the Appeals Office at 605.626.2310 of the language spoken, prior to the date of the hearing.

The reason for the hearing is Claimant appealed a determination that concluded Claimant was ineligible for benefits commencing 03/01/2020 because Claimant is not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified under the CARES Act.

Agency determined Claimant was not at fault in receiving an overpayment in the amount of \$14,080 for the weeks ending 03/07/2020, 03/14/2020, 03/21/2020, 03/28/2020, 04/04/2020, 04/11/2020, 04/18/2020, 04/25/2020, 05/02/2020, 05/09/2020, 05/16/2020, 05/23/2020, 05/30/2020, 06/06/2020, 06/13/2020, 06/20/2020, 06/27/2020, 07/04/2020, 07/11/2020, 07/18/2020, 07/25/2020, 08/01/2020 & 08/08/2020.

The issue(s) for the hearing are:

Is Claimant ineligible for benefits commencing 03/01/2020 because she is not considered unemployed, partially unemployed, or unable or unavailable to work for a qualifying reason. Pub. L. 116-136, Sec. 2102 (a) (3) (A) (ii) (I)

Was Claimant overpaid \$14,080 in reemployment assistance benefits for the weeks ending 03/07/2020, 03/14/2020, 03/21/2020, 03/28/2020, 04/04/2020, 04/11/2020, 04/18/2020, 04/25/2020, 05/02/2020, 05/09/2020, 05/16/2020, 05/23/2020, 05/30/2020, 06/06/2020, 06/13/2020, 06/20/2020, 06/27/2020, 07/04/2020, 07/11/2020, 07/18/2020, 07/25/2020, 08/01/2020 & 08/08/2020? SDCL 61-6-41.

The hearing is being held under the legal authority and jurisdiction of SDCL 61-7. The hearing is an adversary proceeding. You have the right to be present and represent yourself at the hearing or be represented by an attorney at your own expense. Under South Dakota law, a claimant may be represented by an attorney or any other authorized representative. Employers may be represented by an officer or employee of the business or by an attorney licensed to practice law in South Dakota. These and other due process rights will be forfeited if they are not exercised at the hearing. If you do not appear at the scheduled time of the hearing, the matter may be dismissed or it may be decided on the basis of evidence presented by the other party at the hearing. Following the hearing, the Administrative Law Judge will issue a decision that may deny reemployment assistance benefits to the claimant or grant benefits that may be charged to the employer.

Note: Any additional documents to be considered during the hearing must be mailed **IMMEDIATELY** to the Reemployment Assistance Appeals Office at PO Box 4730, Aberdeen, SD 57402 or faxed to 605.626.2322. Contact the Appeals Office in Aberdeen, South Dakota at 605.626.2310 if you have any questions. Further, if you or anyone participating in the hearing on your behalf requires accommodations due to a disability, contact the Appeals Office immediately and suitable arrangements will be made.

If the amount in controversy in this matter exceeds \$2500 or if a property right may be terminated as a result of this proceeding, any party to this case has a right to request within 10 days of the date of this notice that the matter be transferred to the Office of Hearing Examiners. If the matter is transferred to the Office of Hearing Examiners, the hearing examiner will make proposed findings of fact and conclusions of law and a proposed decision. The Department of Labor and Regulation may accept, reject, or modify those findings, conclusions, and decision. A decision based on a hearing before the Department of Labor and Regulation or the Office of Hearing Examiners may be appealed by a party in interest to Circuit Court and the South Dakota Supreme Court as provided by law.

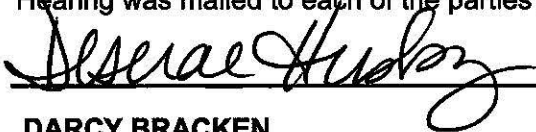
Dated: March 22, 2021



Gerald M McCabe
Administrative Law Judge
South Dakota Department of Labor & Regulation
Reemployment Assistance Appeals
PO Box 4730
Aberdeen, SD 57402-4730
605.626.2310

CERTIFICATE OF SERVICE

I certify that on March 22, 2021, at Aberdeen, South Dakota, a true and correct copy of this Notice of Hearing was mailed to each of the parties listed below.



DARCY BRACKEN
24674 WHITE TAIL RID
HERMOSA SD 57744-5100

SD REEMPLOYMENT ASSISTANCE DIV
PO BOX 4730
ABERDEEN SD 57402-4730

Initial Claim Review**General Information**

CSR Submitted 4/20/2020

Confirmation Number 20200420113154825433

Claimant ID: 208692

Effective Date: 4/19/2020

First Name: Darcy

Middle Initial: L

Last Name: Bracken

Other Last Name:

US Citizen: Yes

Member of a Union: No

Deduct Federal Taxes: Yes

Were you involuntarily separated from your job due to COVID-19? Yes

Contact Information

Home Address: 24674 White Tail Ridge Rd

Home City: Hermosa

Home State: SD

Home Zip: 57744-5100

Home County: Pennington

Mailing Address: 24674 White Tail Ridge Rd

Mailing City: Hermosa

Agency Exhibit

1 (doc# 1-5)

Mailing State: SD

Mailing Zip: 57744-5100

Mailing County: Pennington

Phone: 605-939-5831

Alternate Phone:

Email Address: darcy@whitetailridgesd.com

Personal Information

Gender: Female

Hispanic: No

Race: White

Disability: No

Education: Masters Degree

Military: No

Employer Information

No removed employers.

Eligibility

Availability

Ability

2019 WAGES**Self Employed 28696.00**

PUA

Select the type of employment you lost. I was self employed

What date did you become unemployed as a result of
COVID-19? 03/01/2020Check the COVID-19 reason(s) as listed in Section 2102
(a)(3)(A)(ii) of the CARES Act that best describes your
situation. I am self-employed
(including an independent
contractor or gig worker)
and experienced a
significant reduction of
services because of the
COVID-19 public health
emergencyPlease provide a brief explanation of your unemployment
situation. I own a small bed and
breakfast. The travel
industry has been hit very
hard by COVID19 so we
have no business due to it.Do you have the ability to telework (work from home)
with pay? NoIf so, were you offered to continue to work the same
number of hours? N/AIf not for the COVID 19 pandemic, are you otherwise
able to work and available for work? YesIntentional misrepresentation is FRAUD. Attempting to
claim or collect payments by entering false information
could mean a loss of benefits, fines, imprisonment and
the inability to receive future benefits. Please note the

information you provide will be verified through matching programs and will be further investigated.

I acknowledge I have read and understand the questions asked above. I certify that I am otherwise able and available to work, except I am unemployed, partially unemployed, or unable or unavailable to work because of the listed COVID-19 reason(s) I choose above.

IMPORTANT INFORMATION

In order to be eligible for reemployment assistance benefits you are required to:

- Search for Work
- Register for Work
- File a weekly request for payment

Additional Instructions

You will be receiving a packet of instructions and information within the next 3-5 business days. Be sure to carefully read all of the information included in this packet. Review your monetary determination notice to ensure all of your wages are reported correctly (for initial claims ONLY). Your packet will include a blue claimant handbook titled Facts About Reemployment Assistance Benefits. Be sure to read the entire handbook. If you have questions about your requirements for reemployment assistance, contact Customer Service at 605.626.2452.

WORK SEARCH REQUIRED

You are required to make an active search for work each week. This includes contacting a minimum of 2 different employers each week. You must apply using the method of application the employer requires. Telephone contacts are not an acceptable method of contact. Your work search must be an honest and reasonable effort to find new employment. Your job contacts will periodically be verified to ensure you are following the employer's application process to secure employment.

You cannot repeat a job contact with the same employer unless 30 days has elapsed between the contacts.

If it is determined that you did not make an active search for work, you may be held overpaid. Any overpayments must be paid back. Any amount not paid back may be referred to a collection agency, or future tax refunds could be withheld.

You must be able and available for work each week that you request reemployment assistance benefits. You must accept any offer of suitable work.

Any individual who willfully or fraudulently misrepresents any fact concerning work search to secure or increase benefits will have an administrative penalty of four weeks for each week of misrepresentation in accordance with SDCL 61-6-38. Specifically, any individual who falsifies job contacts or dates of contacts will be subject to the penalty.

WORK REGISTRATION REQUIRED

You must register for work with the designated state workforce agency in the state in which you reside. If you live in South Dakota, you have already been registered with the SDWORKS program as a result of filing this reemployment assistance claim. Out-of-state claimants have fourteen (14) calendar days from today to register with their local workforce agency. This agency may go by names such as: Workforce Development, Career Center, Job Service, Employment Services, etc.

WEEKLY REQUEST FOR BENEFIT PAYMENT REQUIRED

You are required to file a weekly request for payment for each week you are requesting reemployment assistance benefits. You can file online at www.RAclaims.sd.gov using the username and password given to you when you filed your RA claim, or by calling 605.626.3212 using a 4 digit PIN. Both options are available 24 hours a day, seven days a week. Your first weekly request for payment will be for the week ending **4/25/2020**. You must file this weekly request for payment anytime between **4/26/2020** and **5/2/2020**. Further information on filing your weekly request for payment is included in the Facts About Reemployment Assistance Benefits blue claimant handbook. If you have any questions regarding your claim or filing requirements, contact Customer Service at 605.626.2452 during normal business hours from 8 a.m. to 5 p.m. CDT.

The first week you are eligible to receive reemployment assistance benefits is considered a non-paid waiting week and is required by state law. You must file a weekly request for payment, make your job contacts and meet all other eligibility requirements for that week in order for the week to be used as your non paid waiting week.

REOPENING YOUR CLAIM

You must reopen your reemployment assistance claim under the following circumstances:

1. If you have worked and later separate from that employer even if you worked one day or less (there is no exemption from having to reopen after a job separation).
2. If you have not filed a weekly request for payment for a period of four consecutive weeks or more.
3. If you have a change of address as a result of moving from one state to another.

You may reopen your claim online at www.RAclaims.sd.gov or by contacting the Telephone claims center at 605.626.3179. A claim filed on a Sunday is effective that Sunday, and a claim filed on Monday through Saturday is effective on the Sunday preceding the date the claim was filed. If you do not file the claim within the week for which you wish to receive benefits, you may lose benefits for that week.

If you are approved for reemployment assistance benefits, payments are issued to a Comerica Bank Way2Go Debit Mastercard. The debit card will be arriving within the next 7-10 business days. If you wish to have your benefits deposited into a checking or savings account, log into your online reemployment assistance account at www.RAclaims.sd.gov and select the "Change Payment Method" option on the main menu. A direct deposit form is available upon request by contacting Customer Service at 605.626.2452.

If you have questions about your claim or about any of the information that you receive in your information packet, contact Customer Service at 605.626.2452.

☒ **I have fully read and understood the instructions above and accept these conditions.**

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081420

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

23 \$172.00 \$172.00 000002 082020 030720 93080 2 0 A SP 0040X

WAGES SEVERANCE VACATION HOLIDAY WORKMANS
EARNED PAY PAY PAY COMP
\$01.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I

1. WORKED Y

HOURS 001.0 EARNINGS 001.00 SELF EMPLOY Y STILL WORKING Y

2. OTHER INCOME N

HOLIDAY VACATION SICK SEVERANCE OTHER
000.00 000.00 000.00 000.00 000.00

3. PENSION N

4. ON CALL Y

5. SEARCHED FOR WORK N

6. PHYSICALLY ABLE Y

7. AVAILABLE Y

8. REFUSE WORK N

9. SCHOOL N

Agency Exhibit

2 (Doc #24-46)

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081420

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|---------|---------|--------|---------|---------|--------|-----|-----|-----|----|-----|-----|
|------------|---------|---------|--------|---------|---------|--------|-----|-----|-----|----|-----|-----|

| | | | | | | | | | | | | |
|----|----------|----------|--------|--------|--------|-------|---|---|---|--|----|------|
| 17 | \$172.00 | \$172.00 | 000002 | 081720 | 031420 | 93080 | 1 | 0 | A | | SP | 0041 |
|----|----------|----------|--------|--------|--------|-------|---|---|---|--|----|------|

| WAGES EARNED | SEVERANCE PAY | VACATION PAY | HOLIDAY PAY | WORKMANS COMP |
|-----------------|------------------|-----------------|----------------|------------------|
| \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 |

| | | | |
|------------------|---|-------------------|---|
| 0. GAP IN FILING | I | GAP STILL WORKING | I |
|------------------|---|-------------------|---|

| | |
|-----------|---|
| 1. WORKED | N |
|-----------|---|

| | | | | | | | |
|-------|-------|----------|--------|-------------|---|---------------|---|
| HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I |
|-------|-------|----------|--------|-------------|---|---------------|---|

| | |
|-----------------|---|
| 2. OTHER INCOME | N |
|-----------------|---|

| HOLIDAY | VACATION | SICK | SEVERANCE | OTHER |
|---------|----------|--------|-----------|--------|
| 000.00 | 000.00 | 000.00 | 000.00 | 000.00 |

| | |
|------------|---|
| 3. PENSION | N |
|------------|---|

| | |
|------------|---|
| 4. ON CALL | Y |
|------------|---|

| | |
|----------------------|---|
| 5. SEARCHED FOR WORK | N |
|----------------------|---|

| | |
|--------------------|---|
| 6. PHYSICALLY ABLE | Y |
|--------------------|---|

| | |
|--------------|---|
| 7. AVAILABLE | Y |
|--------------|---|

| | |
|----------------|---|
| 8. REFUSE WORK | N |
|----------------|---|

| | |
|-----------|---|
| 9. SCHOOL | N |
|-----------|---|

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081420

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|---------|----------|----------|--------|---------|---------|--------|-----|-----|-----|----|-----|------|
| 18 | \$172.00 | \$172.00 | 000002 | 081720 | 032120 | 93080 | 1 | 0 | A | | SP | 0042 |

| | WAGES EARNED | SEVERANCE PAY | VACATION PAY | HOLIDAY PAY | WORKMANS COMP |
|--|-----------------|------------------|-----------------|----------------|------------------|
| | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 |

0. GAP IN FILING I GAP STILL WORKING I

1. WORKED N

HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I

2. OTHER INCOME N

| HOLIDAY | VACATION | SICK | SEVERANCE | OTHER |
|---------|----------|--------|-----------|--------|
| 000.00 | 000.00 | 000.00 | 000.00 | 000.00 |

3. PENSION N

4. ON CALL Y

5. SEARCHED FOR WORK N

6. PHYSICALLY ABLE Y

7. AVAILABLE Y

8. REFUSE WORK N

9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081420

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|---------|---------------|-----|----------|----|-----|------|
| 19 | \$172.00 | \$172.00 | 000002 | 081720 | 032820 | 93080 | 1 | 0 | A | | SP | 0043 |
| | | | WAGES | SEVERANCE | VACATION | HOLIDAY | | | WORKMANS | | | |
| | | | EARNED | PAY | PAY | PAY | | | COMP | | | |
| | | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | \$00.00 | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | | | I | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | Y | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | N | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | Y | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081420

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

20 \$172.00 \$172.00 000002 081720 040420 93080 1 0 A SP 0044
 WAGES SEVERANCE VACATION HOLIDAY WORKMANS
 EARNED PAY PAY PAY COMP
 \$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I
 1. WORKED N
 HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I
 2. OTHER INCOME N
 HOLIDAY VACATION SICK SEVERANCE OTHER
 000.00 000.00 000.00 000.00 000.00
 3. PENSION N
 4. ON CALL Y
 5. SEARCHED FOR WORK N
 6. PHYSICALLY ABLE Y
 7. AVAILABLE Y
 8. REFUSE WORK N
 9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081420

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

20 \$600.00 \$600.00 000002 081720 040420 93064 0 0 A SP 0044
 WAGES SEVERANCE VACATION HOLIDAY WORKMANS
 EARNED PAY PAY PAY COMP
 \$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I
 1. WORKED N
 HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I
 2. OTHER INCOME N
 HOLIDAY VACATION SICK SEVERANCE OTHER
 000.00 000.00 000.00 000.00 000.00
 3. PENSION N
 4. ON CALL Y
 5. SEARCHED FOR WORK N
 6. PHYSICALLY ABLE Y
 7. AVAILABLE Y
 8. REFUSE WORK N
 9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081420

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 21 | \$172.00 | \$172.00 | 000002 | 081720 | 041120 | 93080 | 1 | 0 | A | | SP | 0045 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | Y | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | N | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | Y | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081420

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 21 | \$600.00 | \$600.00 | 000002 | 081720 | 041120 | 93064 | 0 | 0 | A | | SP | 0045 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | Y | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | N | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | Y | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081420

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

22 \$172.00 \$172.00 000002 081720 041820 93080 1 0 A SP 0046

WAGES SEVERANCE VACATION HOLIDAY WORKMANS
EARNED PAY PAY PAY COMP
\$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I

1. WORKED N

HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I

2. OTHER INCOME N

HOLIDAY VACATION SICK SEVERANCE OTHER
000.00 000.00 000.00 000.00 000.00

3. PENSION N

4. ON CALL Y

5. SEARCHED FOR WORK N

6. PHYSICALLY ABLE Y

7. AVAILABLE Y

8. REFUSE WORK N

9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081420

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

22 \$600.00 \$600.00 000002 081720 041820 93064 0 0 A SP 0046

WAGES SEVERANCE VACATION HOLIDAY WORKMANS
EARNED PAY PAY PAY COMP
\$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I

1. WORKED N

HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I

2. OTHER INCOME N

HOLIDAY VACATION SICK SEVERANCE OTHER
000.00 000.00 000.00 000.00 000.00

3. PENSION N

4. ON CALL Y

5. SEARCHED FOR WORK N

6. PHYSICALLY ABLE Y

7. AVAILABLE Y

8. REFUSE WORK N

9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 070320

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 07 | \$172.00 | \$172.00 | 000002 | 070620 | 042520 | 93080 | 1 | 0 | A | | | 0148 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | Y | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | N | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | Y | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 070320

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 07 | \$600.00 | \$600.00 | 000002 | 070620 | 042520 | 93064 | 0 | 0 | A | | | 0148 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | Y | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | N | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | Y | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 070320

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

08 \$172.00 \$172.00 000002 070620 050220 93080 1 0 A 0147
 WAGES SEVERANCE VACATION HOLIDAY WORKMANS
 EARNED PAY PAY PAY COMP
 \$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I
 1. WORKED N
 HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I
 2. OTHER INCOME N
 HOLIDAY VACATION SICK SEVERANCE OTHER
 000.00 000.00 000.00 000.00 000.00
 3. PENSION N
 4. ON CALL Y
 5. SEARCHED FOR WORK N
 6. PHYSICALLY ABLE Y
 7. AVAILABLE Y
 8. REFUSE WORK N
 9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 070320

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

08 \$600.00 \$600.00 000002 070620 050220 93064 0 0 A 0147
 WAGES SEVERANCE VACATION HOLIDAY WORKMANS
 EARNED PAY PAY PAY COMP
 \$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I
 1. WORKED N
 HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I
 2. OTHER INCOME N
 HOLIDAY VACATION SICK SEVERANCE OTHER
 000.00 000.00 000.00 000.00 000.00
 3. PENSION N
 4. ON CALL Y
 5. SEARCHED FOR WORK N
 6. PHYSICALLY ABLE Y
 7. AVAILABLE Y
 8. REFUSE WORK N
 9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 070320

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

09 \$172.00 \$172.00 000002 070620 050920 93080 1 0 A 0149

WAGES SEVERANCE VACATION HOLIDAY WORKMANS
EARNED PAY PAY PAY COMP
\$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I
1. WORKED N
HOURS 000.0 EARNINGS 000.0 SELF EMPLOY I STILL WORKING I
2. OTHER INCOME N
HOLIDAY VACATION SICK SEVERANCE OTHER
000.00 000.00 000.00 000.00 000.00
3. PENSION N
4. ON CALL Y
5. SEARCHED FOR WORK N
6. PHYSICALLY ABLE Y
7. AVAILABLE Y
8. REFUSE WORK N
9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 070320

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

09 \$600.00 \$600.00 000002 070620 050920 93064 0 0 A 0149

WAGES SEVERANCE VACATION HOLIDAY WORKMANS
EARNED PAY PAY PAY COMP
\$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I
1. WORKED N
HOURS 000.0 EARNINGS 000.0 SELF EMPLOY I STILL WORKING I
2. OTHER INCOME N
HOLIDAY VACATION SICK SEVERANCE OTHER
000.00 000.00 000.00 000.00 000.00
3. PENSION N
4. ON CALL Y
5. SEARCHED FOR WORK N
6. PHYSICALLY ABLE Y
7. AVAILABLE Y
8. REFUSE WORK N
9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN XXXXXX 3354

KEYDATE 052220

| | | | | | | | | | | | |
|-------------|---------|--------|---------|---------|--------|-----|-----|-----|----|-----|-----|
| PAY WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
| NO. | | | | | | | | | | | |

| | | | | | | | | | | | |
|----|----------|----------|--------|--------|--------|-------|---|---|---|-----|------|
| 01 | \$172.00 | \$172.00 | 000002 | 052620 | 051620 | 93080 | 1 | 0 | A | WEB | 0125 |
|----|----------|----------|--------|--------|--------|-------|---|---|---|-----|------|

| | | | | |
|---------|-----------|----------|---------|----------|
| WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS |
| EARNED | PAY | PAY | PAY | COMP |
| \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 |

| | | | |
|----------------------|----------|-------------------|-----------|
| 0. GAP IN FILING | N | GAP STILL WORKING | I |
| 1. WORKED | N | | |
| HOURS | 000.0 | EARNINGS | 000.00 |
| 2. OTHER INCOME | N | SELF EMPLOY | I |
| HOLIDAY | VACATION | SICK | SEVERANCE |
| 000.00 | 000.00 | 000.00 | 000.00 |
| 3. PENSION | N | | |
| 4. ON CALL | N | | |
| 5. SEARCHED FOR WORK | I | | |
| 6. PHYSICALLY ABLE | Y | | |
| 7. AVAILABLE | N | | |
| 8. REFUSE WORK | N | | |
| 9. SCHOOL | N | | |

B E N E F I T H I S T O R Y F I L E

SSN XXXXXX 3354

KEYDATE 052220

| | | | | | | | | | | | |
|-------------|---------|--------|---------|---------|--------|-----|-----|-----|----|-----|-----|
| PAY WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
| NO. | | | | | | | | | | | |

| | | | | | | | | | | | |
|----|----------|----------|--------|--------|--------|-------|---|---|---|-----|------|
| 01 | \$600.00 | \$600.00 | 000002 | 052620 | 051620 | 93064 | 0 | 0 | A | WEB | 0125 |
|----|----------|----------|--------|--------|--------|-------|---|---|---|-----|------|

| | | | | |
|---------|-----------|----------|---------|----------|
| WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS |
| EARNED | PAY | PAY | PAY | COMP |
| \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 |

| | | | |
|----------------------|----------|-------------------|-----------|
| 0. GAP IN FILING | N | GAP STILL WORKING | I |
| 1. WORKED | N | | |
| HOURS | 000.0 | EARNINGS | 000.00 |
| 2. OTHER INCOME | N | SELF EMPLOY | I |
| HOLIDAY | VACATION | SICK | SEVERANCE |
| 000.00 | 000.00 | 000.00 | 000.00 |
| 3. PENSION | N | | |
| 4. ON CALL | N | | |
| 5. SEARCHED FOR WORK | I | | |
| 6. PHYSICALLY ABLE | Y | | |
| 7. AVAILABLE | N | | |
| 8. REFUSE WORK | N | | |
| 9. SCHOOL | N | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 053020

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 02 | \$172.00 | \$172.00 | 000002 | 060120 | 052320 | 93080 | 1 | 0 | A | | WEB | 0591 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | N | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | I | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | N | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 053020

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 02 | \$600.00 | \$600.00 | 000002 | 060120 | 052320 | 93064 | 0 | 0 | A | | WEB | 0591 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | N | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | I | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | N | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 060520

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 03 | \$172.00 | \$172.00 | 000002 | 060820 | 053020 | 93080 | 1 | 0 | A | | WEB | 0588 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | N | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | I | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | N | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 060520

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 03 | \$600.00 | \$600.00 | 000002 | 060820 | 053020 | 93064 | 0 | 0 | A | | WEB | 0588 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | N | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | I | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | N | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 061220

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 04 | \$172.00 | \$172.00 | 000002 | 061520 | 060620 | 93080 | 1 | 0 | A | | WEB | 0391 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | N | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | I | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | N | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 061220

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 04 | \$600.00 | \$600.00 | 000002 | 061520 | 060620 | 93064 | 0 | 0 | A | | WEB | 0391 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | N | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | I | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | N | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 061920

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 05 | \$172.00 | \$172.00 | 000002 | 062220 | 061320 | 93080 | 1 | 0 | A | | WEB | 0343 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | N | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | I | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | N | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 061920

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 05 | \$600.00 | \$600.00 | 000002 | 062220 | 061320 | 93064 | 0 | 0 | A | | WEB | 0343 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | N | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | I | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | N | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 062720

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

06 \$172.00 \$172.00 000002 062920 062020 93080 1 0 A WEB 0672
 WAGES SEVERANCE VACATION HOLIDAY WORKMANS
 EARNED PAY PAY PAY COMP
 \$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I
 1. WORKED N
 HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I
 2. OTHER INCOME N
 HOLIDAY VACATION SICK SEVERANCE OTHER
 000.00 000.00 000.00 000.00 000.00
 3. PENSION N
 4. ON CALL N
 5. SEARCHED FOR WORK I
 6. PHYSICALLY ABLE Y
 7. AVAILABLE N
 8. REFUSE WORK N
 9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 062720

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

06 \$600.00 \$600.00 000002 062920 062020 93064 0 0 A WEB 0672
 WAGES SEVERANCE VACATION HOLIDAY WORKMANS
 EARNED PAY PAY PAY COMP
 \$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I
 1. WORKED N
 HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I
 2. OTHER INCOME N
 HOLIDAY VACATION SICK SEVERANCE OTHER
 000.00 000.00 000.00 000.00 000.00
 3. PENSION N
 4. ON CALL N
 5. SEARCHED FOR WORK I
 6. PHYSICALLY ABLE Y
 7. AVAILABLE N
 8. REFUSE WORK N
 9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN 3354

KEYDATE 071120

| | | | | | | | | | | | |
|-------------|---------|--------|---------|---------|--------|-----|-----|-----|----|-----|-----|
| PAY WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
| NO. | | | | | | | | | | | |

| | | | | | | | | | | |
|----|----------|----------|--------|--------|--------|-------|---|---|---|----------|
| 11 | \$172.00 | \$172.00 | 000002 | 071320 | 070420 | 93080 | 1 | 0 | A | WEB 0561 |
|----|----------|----------|--------|--------|--------|-------|---|---|---|----------|

| | | | | |
|-----------------|------------------|-----------------|----------------|------------------|
| WAGES EARNED | SEVERANCE PAY | VACATION PAY | HOLIDAY PAY | WORKMANS COMP |
| \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 |

0. GAP IN FILING I GAP STILL WORKING I

1. WORKED N

HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I

2. OTHER INCOME N

| | | | | |
|---------|----------|--------|-----------|--------|
| HOLIDAY | VACATION | SICK | SEVERANCE | OTHER |
| 000.00 | 000.00 | 000.00 | 000.00 | 000.00 |

3. PENSION N

4. ON CALL N

5. SEARCHED FOR WORK I

6. PHYSICALLY ABLE Y

7. AVAILABLE N

8. REFUSE WORK N

9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN  3354

KEYDATE 071120

| | | | | | | | | | | | | |
|-----|---------|---------|--------|---------|---------|--------|-----|-----|-----|----|-----|-----|
| PAY | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
| NO. | | | | | | | | | | | | |

| | | | | | | | | | | |
|----|----------|----------|--------|--------|--------|-------|---|---|---|----------|
| 11 | \$600.00 | \$600.00 | 000002 | 071320 | 070420 | 93064 | 0 | 0 | A | WEB 0561 |
|----|----------|----------|--------|--------|--------|-------|---|---|---|----------|

| | | | | |
|---------|-----------|----------|---------|----------|
| WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS |
| EARNED | PAY | PAY | PAY | COMP |
| \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 |

0. GAP IN FILING I GAP STILL WORKING I

1. WORKED N

HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I

| | |
|-----------------|---|
| 2. OTHER INCOME | N |
|-----------------|---|

| | | | | |
|---------|----------|--------|-----------|--------|
| HOLIDAY | VACATION | SICK | SEVERANCE | OTHER |
| 000.00 | 000.00 | 000.00 | 000.00 | 000.00 |

3. PENSION

4. ON CALL N

5. SEARCHED FOR WORK I

6. PHYSICALLY ABLE Y

7. AVAILABLE N

8. REFUSE WORK N

9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 071520

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ | | | | | | | | | | | | | | | |
|---|-----------|----------|-----------|----------|---------|--------|-----|-----|-----|----|-----|------|---------|-----------|----------|-----------|----------|--------|--------|--------|--------|--------|---------|---------|---------|---------|---------|
| 12 | \$153.00 | \$153.00 | 000002 | 071620 | 071120 | 93080 | 2 | 0 | A | | WEB | 0715 | | | | | | | | | | | | | | | |
| <table border="0"> <tr> <td>WAGES</td> <td>SEVERANCE</td> <td>VACATION</td> <td>HOLIDAY</td> <td>WORKMANS</td> </tr> <tr> <td>EARNED</td> <td>PAY</td> <td>PAY</td> <td>PAY</td> <td>COMP</td> </tr> <tr> <td>\$50.00</td> <td>\$00.00</td> <td>\$00.00</td> <td>\$00.00</td> <td>\$00.00</td> </tr> </table> | | | | | | | | | | | | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | EARNED | PAY | PAY | PAY | COMP | \$50.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 |
| WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | | | | | | | | | | | | | | | | | | |
| EARNED | PAY | PAY | PAY | COMP | | | | | | | | | | | | | | | | | | | | | | | |
| \$50.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | | | | | | | | | | | | | | | | | | |
| 0. GAP IN FILING I GAP STILL WORKING I | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. WORKED Y | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| HOURS 025.0 EARNINGS 050.00 SELF EMPLOY I STILL WORKING Y | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. OTHER INCOME N | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="0"> <tr> <td>HOLIDAY</td> <td>VACATION</td> <td>SICK</td> <td>SEVERANCE</td> <td>OTHER</td> </tr> <tr> <td>000.00</td> <td>000.00</td> <td>000.00</td> <td>000.00</td> <td>000.00</td> </tr> </table> | | | | | | | | | | | | | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | |
| HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | | | | | | | | | | | | | | | | | |
| 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | | | | | | | | | | | | | | | | | |
| 3. PENSION N | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. ON CALL N | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. SEARCHED FOR WORK I | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. PHYSICALLY ABLE Y | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. AVAILABLE N | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. REFUSE WORK N | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9. SCHOOL N | | | | | | | | | | | | | | | | | | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 071520

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ | | | | | | | | | | | | | | | |
|---|-----------|----------|-----------|----------|---------|--------|-----|-----|-----|----|-----|------|---------|-----------|----------|-----------|----------|--------|--------|--------|--------|--------|---------|---------|---------|---------|---------|
| 12 | \$600.00 | \$600.00 | 000002 | 071620 | 071120 | 93064 | 0 | 0 | A | | WEB | 0715 | | | | | | | | | | | | | | | |
| <table border="0"> <tr> <td>WAGES</td> <td>SEVERANCE</td> <td>VACATION</td> <td>HOLIDAY</td> <td>WORKMANS</td> </tr> <tr> <td>EARNED</td> <td>PAY</td> <td>PAY</td> <td>PAY</td> <td>COMP</td> </tr> <tr> <td>\$50.00</td> <td>\$00.00</td> <td>\$00.00</td> <td>\$00.00</td> <td>\$00.00</td> </tr> </table> | | | | | | | | | | | | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | EARNED | PAY | PAY | PAY | COMP | \$50.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 |
| WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | | | | | | | | | | | | | | | | | | |
| EARNED | PAY | PAY | PAY | COMP | | | | | | | | | | | | | | | | | | | | | | | |
| \$50.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | | | | | | | | | | | | | | | | | | |
| 0. GAP IN FILING I GAP STILL WORKING I | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. WORKED Y | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| HOURS 025.0 EARNINGS 050.00 SELF EMPLOY I STILL WORKING Y | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. OTHER INCOME N | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="0"> <tr> <td>HOLIDAY</td> <td>VACATION</td> <td>SICK</td> <td>SEVERANCE</td> <td>OTHER</td> </tr> <tr> <td>000.00</td> <td>000.00</td> <td>000.00</td> <td>000.00</td> <td>000.00</td> </tr> </table> | | | | | | | | | | | | | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | |
| HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | | | | | | | | | | | | | | | | | |
| 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | | | | | | | | | | | | | | | | | |
| 3. PENSION N | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. ON CALL N | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. SEARCHED FOR WORK I | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. PHYSICALLY ABLE Y | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. AVAILABLE N | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. REFUSE WORK N | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9. SCHOOL N | | | | | | | | | | | | | | | | | | | | | | | | | | | |

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 072320

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

13 \$115.00 \$115.00 000002 072420 071820 93080 2 0 A WEB 0452
 WAGES SEVERANCE VACATION HOLIDAY WORKMANS
 EARNED PAY PAY PAY COMP
 \$100.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I

1. WORKED Y

HOURS 030.0 EARNINGS 100.00 SELF EMPLOY I STILL WORKING Y

2. OTHER INCOME N

HOLIDAY VACATION SICK SEVERANCE OTHER
 000.00 000.00 000.00 000.00 000.00

3. PENSION N

4. ON CALL N

5. SEARCHED FOR WORK I

6. PHYSICALLY ABLE Y

7. AVAILABLE N

8. REFUSE WORK N

9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 072320

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

13 \$600.00 \$600.00 000002 072420 071820 93064 0 0 A WEB 0452
 WAGES SEVERANCE VACATION HOLIDAY WORKMANS
 EARNED PAY PAY PAY COMP
 \$100.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I

1. WORKED Y

HOURS 030.0 EARNINGS 100.00 SELF EMPLOY I STILL WORKING Y

2. OTHER INCOME N

HOLIDAY VACATION SICK SEVERANCE OTHER
 000.00 000.00 000.00 000.00 000.00

3. PENSION N

4. ON CALL N

5. SEARCHED FOR WORK I

6. PHYSICALLY ABLE Y

7. AVAILABLE N

8. REFUSE WORK N

9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 072920

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

14 \$172.00 \$172.00 000002 073020 072520 93080 1 0 A WEB 0437

WAGES SEVERANCE VACATION HOLIDAY WORKMANS
EARNED PAY PAY PAY COMP
\$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I
1. WORKED N
HOURS 000.0 EARNINGS 000.0 SELF EMPLOY I STILL WORKING I
2. OTHER INCOME N
HOLIDAY VACATION SICK SEVERANCE OTHER
000.00 000.00 000.00 000.00 000.00
3. PENSION N
4. ON CALL N
5. SEARCHED FOR WORK I
6. PHYSICALLY ABLE Y
7. AVAILABLE N
8. REFUSE WORK N
9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 072920

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

14 \$600.00 \$600.00 000002 073020 072520 93064 0 0 A WEB 0437

WAGES SEVERANCE VACATION HOLIDAY WORKMANS
EARNED PAY PAY PAY COMP
\$00.00 \$00.00 \$00.00 \$00.00 \$00.00

0. GAP IN FILING I GAP STILL WORKING I
1. WORKED N
HOURS 000.0 EARNINGS 000.0 SELF EMPLOY I STILL WORKING I
2. OTHER INCOME N
HOLIDAY VACATION SICK SEVERANCE OTHER
000.00 000.00 000.00 000.00 000.00
3. PENSION N
4. ON CALL N
5. SEARCHED FOR WORK I
6. PHYSICALLY ABLE Y
7. AVAILABLE N
8. REFUSE WORK N
9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 080420

PAY WAR-AMT EMP-AMT WAR-NO WAR-ISS WAR-WED SERIAL TYP STA PRG CC OPR SEQ
NO.

15 \$172.00 \$172.00 000002 080520 080120 93080 1 0 A WEB 0899

| WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS |
|---------|-----------|----------|---------|----------|
| EARNED | PAY | PAY | PAY | COMP |
| \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 |

0. GAP IN FILING I GAP STILL WORKING I

1. WORKED N

HOURS 000.0 EARNINGS 000.00 SELF EMPLOY I STILL WORKING I

2. OTHER INCOME N

| HOLIDAY | VACATION | SICK | SEVERANCE | OTHER |
|---------|----------|--------|-----------|--------|
| 000.00 | 000.00 | 000.00 | 000.00 | 000.00 |

3. PENSION N

4. ON CALL N

5. SEARCHED FOR WORK I

6. PHYSICALLY ABLE Y

7. AVAILABLE N

8. REFUSE WORK N

9. SCHOOL N

B E N E F I T H I S T O R Y F I L E

SSN [REDACTED] 3354

KEYDATE 081120

| PAY NO. | WAR-AMT | EMP-AMT | WAR-NO | WAR-ISS | WAR-WED | SERIAL | TYP | STA | PRG | CC | OPR | SEQ |
|------------|-------------------|----------|-------------------|-----------|-------------|----------|---------------|-----|-----|----|-----|------|
| 16 | \$172.00 | \$172.00 | 000002 | 081220 | 080820 | 93080 | 1 | 0 | A | | WEB | 0718 |
| | | WAGES | SEVERANCE | VACATION | HOLIDAY | WORKMANS | | | | | | |
| | | EARNED | PAY | PAY | PAY | COMP | | | | | | |
| | | \$00.00 | \$00.00 | \$00.00 | \$00.00 | \$00.00 | | | | | | |
| 0. | GAP IN FILING | I | GAP STILL WORKING | | I | | | | | | | |
| 1. | WORKED | N | | | | | | | | | | |
| | HOURS | 000.0 | EARNINGS | 000.00 | SELF EMPLOY | I | STILL WORKING | I | | | | |
| 2. | OTHER INCOME | N | | | | | | | | | | |
| | HOLIDAY | VACATION | SICK | SEVERANCE | OTHER | | | | | | | |
| | 000.00 | 000.00 | 000.00 | 000.00 | 000.00 | | | | | | | |
| 3. | PENSION | N | | | | | | | | | | |
| 4. | ON CALL | N | | | | | | | | | | |
| 5. | SEARCHED FOR WORK | I | | | | | | | | | | |
| 6. | PHYSICALLY ABLE | Y | | | | | | | | | | |
| 7. | AVAILABLE | N | | | | | | | | | | |
| 8. | REFUSE WORK | N | | | | | | | | | | |
| 9. | SCHOOL | N | | | | | | | | | | |

Moschell, Angela

From: Moschell, Angela
Sent: Friday, January 8, 2021 10:52 AM
To: darcy@whitetailridgesd.com
Subject: Reemployment Assistance

Your request for Pandemic Unemployment Insurance Assistance is currently being reviewed. You reported you were self employed and unable to work due to COVID-19. Please answer the following questions.

Name of business:
State tax ID:
Business address:
Business Phone number:
Company website:

How is your business directly affected by COVID-19?
Is your business year round or seasonal?

Are there any city ordinances that prevent you from being able to work? If yes, please provide.
Are there any state mandates that prevented you from being able to work? If yes, please provide.

Please provide all projects with dates that were cancelled as a direct result from COVID

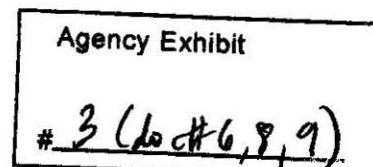
If at any time you were forced to close due to COVID-19, please provide dates and what mandate was being followed.

A response is due before Tuesday January 12th by 12 PM CST. or the agency may proceed with information available.

Angela

Reemployment Assistance Claims Technician
South Dakota Department of Labor and Regulation

Tel: 605.626.2452 | dlr.sd.gov



Email from client

Darcy Bracken



www.whitetailridgesd.com

On 2021-01-08 09:52 AM, Moschell, Angela wrote:

Your request for Pandemic Unemployment Insurance Assistance is currently being reviewed. You reported you were self employed and unable to work due to COVID-19. Please answer the following questions.

Name of business: White Tail Ridge Bed & Breakfast LLC
 State tax ID: 45-4396034
 Business address: 24674 White Tail Ridge Rd., Hermosa, SD 57744
 Business Phone number: 605-939-5831
 Company website: www.whitetailridgesd.com

How is your business directly affected by COVID-19? COVID-19 practically shut down travel nationwide and locally. As an accommodation, we were greatly affected by this. We had a reduction in reservations, and practiced travel industry practices to close rooms for days in between guests. Our expenses were higher due to CDC recommended cleaning protocols.

Is your business year round or seasonal? Year round.

Are there any city ordinances that prevent you from being able to work? If yes, please provide. No
 Are there any state mandates that prevented you from being able to work? If yes, please provide. No

Please provide all projects with dates that were cancelled as a direct result from COVID. N/A

If at any time you were forced to close due to COVID-19, please provide dates and what mandate was being followed. N/A

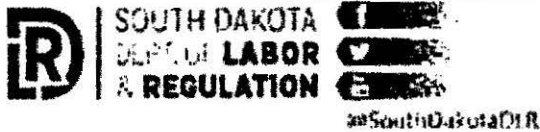
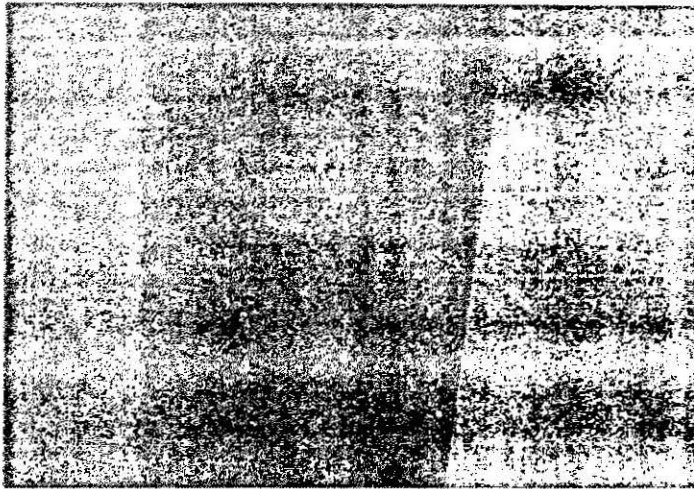
A response is due before Tuesday January 12th by 12 PM CST. or the agency may proceed with information available.

Angela

Reemployment Assistance Claims Technician

South Dakota Department of Labor and Regulation

Tel: 605.626.2452 | dlr.sd.gov



From: White Tail Ridge B&B <innkeepers@whitetailridgesd.com>
Sent: Friday, January 8, 2021 2:20 PM
To: Moschell, Angela <Angela.Moschell@state.sd.us>
Subject: Re: [EXT] Reemployment Assistance

See responses below.

~darcy

Darcy Bracken & John Marxen

White Tail Ridge B&B

www.whitetailridgesd.com

605-939-5831

HOME

ROOMS & RATES

**WHITE
TAIL
RIDGE**

THE TATANKA CABIN

ELOPEMENTS

CART (0)

ABOUT

SPECIALS

BREAKFAST

BIKER FRIENDLY

Agency Exhibit

4 (dock #10-11)

Message Regarding COVID19 ~

We are here and open for business, but it's not business as usual...

The COVID19 pandemic has affected us all. And many folks have understandably canceled their vacation plans, either by choice or by force. We are doing our best to ensure COVID19 remains a stranger to White Tail Ridge B&B. If you travel to the beautiful Black Hills, or are local and looking for a place to escape, we are here and open for business, but in a modified way while restrictions are in place at federal and state levels. We are following these practices at least through early 2021:

We have kicked up our already high quality cleanliness standards a few notches as we are following the CDC's cleaning guidelines.

We are serving our famous hot breakfast individually plated rather than our usual family style. We have other options available if you prefer.

We will not greet you nor say good-bye with a handshake or hug, but rather with a smile from an appropriate distance.

We do require all guests to practice social distancing and wash hands. We have placed hand sanitizer and disinfecting wipes in all rooms, to the greatest extent

1/8/2021

White Tail Ridge Bed and Breakfast | Black Hills - A warm welcome from White Tail Ridge. TripAdvisor's #1 pick for Black Hills bed & break...

possible.

Masks are optional.

Lastly, and most important, please stay home if you are sick.

We are here and open for business... and we are waiting to welcome you whenever it's right for you.

- Darcy & John

Please click here to see how we are handling elopements during the pandemic.

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
REEMPLOYMENT ASSISTANCE APPEALS**

**IN THE MATTER OF
DARCY BRACKEN, Claimant,
AND
SOUTH DAKOTA REEMPLOYMENT
ASSISTANCE DIVISION, Agency.**

**DECISION
APPEAL NO. 82394**

An administrative hearing was held by telephone conference on October 14, 2021. Claimant, Darcy Bracken, appeared and testified. Jane Husman appeared as a representative and witness for the South Dakota Reemployment Assistance Division (Agency). Based on the evidence, the arguments of the parties, and the law, the Administrative Law Judge enters the following Findings of Fact, Conclusions of Law, and Order.

ISSUES

Is Claimant ineligible for Pandemic Unemployment Assistance, commencing March 1, 2020, because Claimant is not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons under the CARES Act?

Was Claimant overpaid \$14,080 in benefits for the weeks ending March 7, 2020, March 14, 2020, March 21, 2020, March 28, 2020, April 4, 2020, April 11, 2020, April 18, 2020, April 25, 2020, May 2, 2020, May 9, 2020, May 16, 2020, May 23, 2020, May 30, 2020, June 6, 2020, June 13, 2020, June 20, 2020, June 27, 2020, July 4, 2020, July 11, 2020, July 18, 2020, July 25, 2020, August 1, 2020, and August 8, 2020?

FINDINGS OF FACT

1. Claimant was self-employed in the operation of a bed and breakfast for approximately nine years. Claimant's business closed on February 1, 2021.
2. Prior to COVID-19, Claimant's business regularly had guests each month.
3. In February 2020, Claimant's business had no new reservations and many reservations from prior bookings were cancelled.
4. Claimant's business has no guests until the end of May 2020.
5. At no point did Claimant's business close despite the lack of guests.
6. Claimant filed a new initial claim for benefits on April 20, 2020 which Agency made effective March 1, 2020 because Claimant reported March 1, 2020 as the date when Claimant became unemployed due to COVID-19.
7. Agency concluded Claimant would not be monetarily eligible to receive reemployment assistance benefits and reviewed the claim for Pandemic Unemployment Assistance.
8. Agency determined Claimant was monetarily eligible to receive PUA benefits with a maximum weekly benefit amount of \$172.
9. Claimant filed weekly requests for payment for the weeks ending March 7, 2020, March 14, 2020, March 21, 2020, March 28, 2020, April 4, 2020, April 11, 2020, April 18, 2020, April 25, 2020, May 2, 2020, May 9, 2020, May 16, 2020, May 23, 2020, May 30, 2020, June 6, 2020, June 13, 2020, June 20, 2020, June 27, 2020, July 4, 2020, July 11, 2020, July 18, 2020, July 25, 2020, August 1, 2020, and August 8, 2020. For all weeks, except the weeks ending July 11, 2020 and July 18, 2020, Claimant received \$172 per week in Pandemic Unemployment Assistance benefits. For all weeks, except the weeks ending March 7, 2020, March 14, 2020, March 21,

- 2020, March 28, 2020, August 1, 2020 and August 8, 2020, Claimant also received \$600 in Federal Pandemic Unemployment Compensation.
10. Claimant filed a weekly request for payment for the week ending July 11, 2020. Claimant reported she worked 25 hours and earned \$50. Claimant received \$153 in PUA benefits this week.
 11. Claimant filed a weekly request for payment for the week ending July 18, 2020. Claimant reported she worked 30 hours and earned \$100. Claimant received \$115 in PUA benefits this week.
 12. Claimant reported to Agency that her business was impacted by COVID-19 as follows "COVID-19 practically shut down travel nationwide and locally. As an accommodation we were greatly affected by this. We had a reduction in reservations, and practices travel industry practices to close rooms for days in between guests. Our expenses were higher due to CDC recommended cleaning protocols."
 13. There were no state or local government orders which prevented Claimant's business from operating.
 14. Neither Claimant no anyone in her household tested positive for COVID-19.
 15. Claimant was not directed by a medical provider to self-quarantine because of concerns about COVID-19.
 16. Claimant appealed an Agency determination that concluded Claimant is ineligible to receive Pandemic Unemployment Assistance, commencing March 1, 2020, because Claimant is not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons under the CARES Act.
 17. Claimant appealed an Agency determination that concluded Claimant was overpaid \$14,080 in benefits for the weeks ending March 7, 2020, March 14, 2020, March 21, 2020, March 28, 2020, April 4, 2020, April 11, 2020, April 18, 2020, April 25, 2020, May 2, 2020, May 9, 2020, May 16, 2020, May 23, 2020, May 30, 2020, June 6, 2020, June 13, 2020, June 20, 2020, June 27, 2020, July 4, 2020, July 11, 2020, July 18, 2020, July 25, 2020, August 1, 2020, and August 8, 2020.

REASONING

The qualifying reasons for eligibility for Pandemic Unemployment Assistance (PUA) are outlined in the CARES Act. Pub. L. 116-136, 2102 (a)(3)(A)(ii)(I). To be eligible for PUA, a claimant must be ineligible for regular unemployment compensation which is called reemployment assistance in South Dakota. The individual must also be considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Both employed and self-employed individuals must meet one of the qualifying reasons. Id. at 2102(a)(3)(A)(ii)(II) (self-employment claimants also must meet "the requirements of subclause (I)").

Those reasons are:

- (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.

The United States Secretary of Labor has established four additional criteria under its authority granted in section (kk) above, as follows:

1. Self-employed individuals who experience a significant diminution in their customary or usual services because of the COVID-19 public health emergency;
2. Individuals who refuse to return to work that is unsafe or accept an offer of new work that is unsafe;
3. Certain individuals providing services to educational institutions or educational service agencies; and
4. Individuals experiencing a reduction of hours or a temporary or permanent layoff.

U.I.P.L. No. 16-20, Change 4, U.I.P.L., No. 16-20, Change 5.

The evidence does not establish that Claimant meets any of the reasons for eligibility identified under the CARES Act. Although Claimant's business experienced a loss of guests during the COVID-19 pandemic, the evidence suggests that the reason for the loss of guests is because of indirect economic consequences from the COVID-19 public health emergency. Reductions in the number of travelers or a decreased demand for bed and breakfast rooms is, without more, properly considered an indirect result of the COVID-19 public health emergency. Claimant's business was not closed by a state or local order. Claimant was neither required to self-quarantine nor was Claimant diagnosed with COVID-19. Claimant's business remained open despite the lack of bookings. Claimant is ineligible to receive Pandemic Unemployment Assistance, commencing March 1, 2020, because Claimant is not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons under the CARES Act.

An individual is liable for the repayment of PUA benefits and the federal supplemental payment if the individual received benefits to which the individual was not legally entitled. Pub. L. 116-136, 2102 (h) and 2104 (f)(2); 20 CFR § 625.14; SDCL 61-6-41. As Claimant is ineligible to receive benefits commencing March 1, 2020, Claimant was overpaid \$14,080 in benefits for the weeks ending March 7, 2020, March 14, 2020, March 21, 2020, March 28, 2020, April 4, 2020, April 11, 2020, April 18, 2020, April 25, 2020, May 2, 2020, May 9, 2020, May 16, 2020, May 23, 2020, May 30, 2020, June 6, 2020, June 13, 2020, June 20, 2020, June 27, 2020, July 4, 2020, July 11, 2020, July 18, 2020, July 25, 2020, August 1, 2020, and August 8, 2020.

Claimant is strongly encouraged to contact the Agency's overpayment section at 605.626.7649 to discuss possible repayment options, to include installment payments.

CONCLUSIONS OF LAW

1. The Department of Labor and Regulation has jurisdiction over the parties and subject matter of this appeal.
2. Claimant is ineligible to receive Pandemic Unemployment Assistance, commencing March 1, 2020, because Claimant is not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons under the CARES Act.
3. Claimant was overpaid \$14,080 in benefits for the weeks ending March 7, 2020, March 14, 2020, March 21, 2020, March 28, 2020, April 4, 2020, April 11, 2020, April 18, 2020, April 25, 2020, May 2, 2020, May 9, 2020, May 16, 2020, May 23, 2020, May 30, 2020, June 6, 2020, June 13, 2020, June 20, 2020, June 27, 2020, July 4, 2020, July 11, 2020, July 18, 2020, July 25, 2020, August 1, 2020, and August 8, 2020.

ORDER

It is the Order of the Administrative Law Judge that Agency's determinations shall be affirmed. Claimant is ineligible to receive Pandemic Unemployment Assistance, commencing March 1, 2020, because Claimant is not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons under the CARES Act. Claimant was overpaid \$14,080 in benefits for the weeks ending March 7, 2020, March 14, 2020, March 21, 2020, March 28, 2020, April 4, 2020, April 11, 2020, April 18, 2020, April 25, 2020, May 2, 2020, May 9, 2020, May 16, 2020, May 23, 2020, May 30, 2020, June 6, 2020, June 13, 2020, June 20, 2020, June 27, 2020, July 4, 2020, July 11, 2020, July 18, 2020, July 25, 2020, August 1, 2020, and August 8, 2020.

Dated October 20, 2021.



Gerald M. McCabe
Administrative Law Judge

NOTICE: This is the final decision in this matter unless you appeal in one of two ways:

- (1) The decision is appealed directly to circuit court within 30 days after the date of this decision, OR
- (2) A request for a Department of Labor and Regulation review is filed by mailing a letter of appeal to the Secretary, S.D. Department of Labor and Regulation, 123 W. Missouri Ave., Pierre SD 57501 within 15 days after the date of this decision. The decision of the Secretary may then be appealed to circuit court within 30 days after the date of the Secretary's decision.

Decisions of the circuit court may be appealed to the South Dakota Supreme Court.

CERTIFICATE OF SERVICE

I certify that on October 20, 2021, at Aberdeen, South Dakota, a true and correct copy of this Decision was mailed to each of the parties listed below.



DARCY BRACKEN
11807 18 MILE RD
CUSTER SD 57730

SOUTH DAKOTA REEMPLOYMENT
ASSISTANCE DIVISION
PO BOX 4730
ABERDEEN SD 57402-4730

RECEIVED

NOV 04 2021

**LABOR & REGULATION
OFFICE OF SECRETARY**

11807 18 Mile Rd.
Custer, SD 57730
605-939-5831
Claimant ID: 222691

November 2, 2021

Secretary
S.D. Department of Labor and Regulation
123 W. Missouri Ave.
Pierre, SD 57501

Subject: Request for a Department of Labor and Regulation Review

Reference: Decision Appeal No. 82394 Dated October 20, 2021

Attachments: (1) Unemployment Insurance Program Letter No. 16-20, Change 4, Attachment 1 dated January 8, 2021
(2) "Travel: The Hardest-Hit U.S. Industry" by the U.S. Travel Association dated June 11, 2021
(3) "How Bad Are Covid-19 Pandemic Effects on Airbnb Guests, Hosts?" by forbes.com dated June 9, 2020
(4) Unemployment Insurance Program Letter No. 16-20, Change 1, Attachment 1 dated April 27, 2020
(5) Unemployment Insurance Program Letter No. 16-20, Change 2, Attachment 1 dated July 21, 2020

I hereby file this appeal regarding your determination of my ineligibility to receive unemployment compensation under PUA of the CARES Act.

I assert that I am eligible for unemployment compensation under section 2102(a)(3)(A)(ii)(I)(~~kk~~) of the CARES Act as I was self-employed in 2020.

Regarding page 4, "Conclusions of Law" Item 2 of the referenced decision appeal:

I dispute that I was ineligible to receive PUA. In fact, I was unable to work due to the following reason under the CARES Act, section 2102(a)(3)(A)(ii)(I) (~~kk~~), as originally written, March 27, 2020: "(~~kk~~) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section." Paragraph (I) outlines items (aa) through (~~kk~~) as reasons for eligibility. It is clear that the reasons are mutually exclusive by the inclusion of the word, "or," in the list. I.e., a person only needs to meet one of the reasons. In my case, (~~kk~~) is the reason that applies to me and supports my eligibility.

Item 2 states, "The evidence does not establish that Claimant meets any of the reasons for eligibility identified under the CARES Act. Although Claimant's business experienced a loss of guests during the COVID-19 pandemic, the evidence suggests that the reason for the loss of guests is because of indirect economic consequences from the COVID-19 public health emergency. Reductions in the number of travelers or a decreased demand for bed and breakfast rooms is, without more, properly considered an indirect result of the COVID-19 public health emergency. Claimant's business was not closed by a state or local order. Claimant was neither required to self-quarantine nor was Claimant diagnosed with COVID-19. Claimant's business remains open despite the lack of bookings. Claimant is ineligible to receive Pandemic Unemployment Assistance, commencing March 1, 2020, because Claimant is not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons under the CARES Act."

This assertion is incorrect. Under the CARES Act, I am not required to provide evidence that I was directly affected by the pandemic, only that I met any additional criteria as stated in paragraph (kk). The paragraph cited pertains to reasons (aa) through (jj) of the CARES Act, *not* (kk).

Furthermore, Attachment 1 clarifies paragraph (kk):

"C.1.kk. The individual meets any additional criteria established by the Secretary for unemployment assistance under this Section (approved criteria clarified).

To date, the Secretary has approved one additional criterion under item (kk): Self-employed individuals (including independent contractors and gig workers) who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent suspension of services, may self-certify under item (kk)."

This paragraph declares that self-employed individuals are eligible if their services were affected by the COVID-19 public health emergency, but does not say nor imply they had to be *directly* affected. It also clarifies that the services do not have to be suspended to be eligible. Furthermore, as outlined in Attachments 2 and 3, the travel industry worldwide was impacted immensely in early 2020 by significant declines in travelers who were afraid to travel, advised to stay home, unable to travel, or mandated not to travel. We were directly affected by this as we ran a bed and breakfast in a tourism industry with guests booking from all over the world. We therefore experienced a significant diminution of services; i.e., we received no bookings for the year until the end of May, and very few until July. In fact, all our advanced bookings were canceled. My business/income (my sole income) for the entire year was affected negatively.

In addition, Attachments 4 and 5, changes to the UIPL No. 16-20, include examples which effectively support my eligibility; they inarguably match my self-employment as an innkeeper.

On a personal note, I self-certified in good faith that "I am self-employed (including an independent contractor or gig worker) and experienced a significant reduction of services because of the COVID-19 public health emergency." (See the referenced document, #003.) I did so in good faith and followed all

instructions provided at that time, with the intention of seeking relief from the devastation to my self-employment caused by the COVID-19 public health emergency. The SD Reemployment Division concurred and paid all of my claims. I stopped requesting benefits when I believed that enough business had been booked and I would no longer need the benefits. We still incurred a business loss for 2020, had fewer guests, and less revenue than prior years. Now, the SD Reemployment Division is reneging on that, making an incorrect assertion that I was not eligible for those benefits and asking me to repay them, in the amount of \$14,080. Therefore, I am forced to defend myself and reiterate the government's law back to the very government that should be following that law. This is disgraceful.

I have clearly outlined my appeal above as to the letter of the law. I would also like to emphasize the spirit of that law. The CARES Act/PUA was brought forth as a means to assist citizens in financially surviving the COVID-19 public health emergency. The PUA was a blessing to my household and business in doing just that.

In summary and as outlined above, I contend that the referenced determination is incorrect and that I was entitled to PUA benefits of \$14,080 under the CARES Act/PUA, and therefore am not required to repay any of those benefits.

I hereby request a Department of Labor and Regulation review.

Sincerely,



Darcy Bracken

jj. The individual's place of employment is closed as a direct result of the COVID-19 public health emergency (examples added/updated). Some examples include, but are not limited to the following:

- If a business is shut down due to an emergency declaration or due to necessary social distancing protocols, the resulting unemployment of affected individuals would be considered a direct result of COVID-19. While a government-mandated closure is not necessary to satisfy this category, the claimant must be able to self-certify that the business was closed "as a direct result of the COVID-19 public health emergency."
- If a business has multiple parts and one or some of those parts is shut down due to restrictions imposed by COVID-19, affected staff from the parts of the business that shut down may be eligible for PUA. For example, a business may include both a restaurant and a brewery. If the individual's place of employment is the restaurant and the restaurant is shut down because of the COVID-19 pandemic, even if the brewery continues to operate, the individual who was employed in the restaurant may be eligible for PUA. An individual who is working reduced hours while his or her place of employment continues to operate does not satisfy the conditions to self-certify under item (jj).

kk. The individual meets any additional criteria established by the Secretary for unemployment assistance under this Section (approved criteria clarified).

To date, the Secretary has approved one additional criterion under item (kk): Self-employed individuals (including independent contractors and gig workers) who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services, may self-certify under item (kk).

When states are developing the list of items (aa) through (kk) to include on their self-certification forms, states may use the following verbiage for item (kk): "I am self-employed (including an independent contractor or gig worker) and experienced a significant reduction of services because of the COVID-19 public health emergency."

States are reminded that for each week of PUA claimed, states must ensure that an individual completes a self-certification form (either paper or online) that includes the following. (See UIPL 16-20, Change 1, Question 45).

- The identification of the specific applicable COVID-19 related reason(s) under Section 2102(a)(3)(A)(ii)(I) of the CARES Act, and
- A notice advising the individual that intentional misrepresentation on the self-certification is fraud.

Additionally, states are also required to take reasonable and customary precautions to deter and detect fraud. Refer to Section C.21. of this Attachment for additional details on

TRAVEL: THE HARDEST-HIT U.S. INDUSTRY

The decline in travel due to COVID-19 has devastated our economy and American jobs. **The \$500 billion loss in travel spending has cost the U.S. \$1.1 trillion in economic output.** Prior to the pandemic, direct travel jobs accounted for 6% of the workforce and total travel-supported jobs accounted for 11%. **But in 2020, direct travel jobs accounted for a disproportionate 35% of jobs lost and total travel supported jobs accounted for a staggering 65%.**

America will not be able to fully rebuild **without the recovery of the travel industry.**

| Travel Spending (\$ billions) | | 2019 | 2020 | \$ Change | % Change |
|--|--|---------|-------|-----------|----------|
| Total | | 1,172.6 | 680.3 | -492.3 | -42% |
| Domestic | | 993.5 | 642.2 | -351.3 | -35% |
| International (incl. passenger fares) | | 179.1 | 38.1 | -141.0 | -79% |
| Leisure | | 866.8 | 585.4 | -281.4 | -32% |
| Business | | 305.8 | 94.9 | -210.9 | -69% |
| General Business | | 178.3 | 64.0 | -114.3 | -64% |
| Conferences/Conventions/Trades Shows | | 127.5 | 30.9 | -96.6 | -76% |
| Travel Economic Output (\$ trillions) | | | | | |
| Total | | 2.6 | 1.5 | -1.1 | -42% |
| Travel-generated Taxes (\$ billions) | | | | | |
| Total | | 168.9 | 112.0 | -56.9 | -34% |
| Federal | | 79.4 | 50.1 | -29.3 | -37% |
| State | | 45.2 | 29.3 | -15.9 | -35% |
| Local | | 44.3 | 32.6 | -11.7 | -26% |
| Travel Jobs (millions) | | | | | |
| Total Supported | | 16.7 | 11.1 | -5.6 | -34% |
| Direct Travel Jobs | | 9.0 | 6.0 | -3.0 | -34% |
| Indirect/Induced Jobs | | 7.7 | 5.1 | -2.6 | -33% |

Updated June 11, 2021

DOMESTIC TRAVEL

| Person-trips (billions) | 2019 | 2020 | \$ Change | % change |
|--------------------------------------|-------|-------|-----------|----------|
| Total Domestic | 2.3 | 1.6 | -0.7 | -32% |
| Leisure | 1.9 | 1.4 | -0.4 | -24% |
| Business | 0.5 | 0.2 | -0.3 | -61% |
| Travel Spending (\$ billions) | | | | |
| Total Domestic | 993.5 | 642.2 | -351.3 | -35% |
| Leisure | 723.9 | 554.7 | -169.2 | -23% |
| Business | 269.6 | 87.6 | -182.1 | -68% |
| General Business | 156.6 | 59.4 | -97.2 | -62% |
| Conferences/conventions/trade shows | 113.1 | 28.2 | -84.9 | -75% |

INTERNATIONAL INBOUND TRAVEL

| Visitations (millions) | 2019 | 2020 | \$ Change | % change |
|--|-------|------|-----------|----------|
| Total International Inbound | 79.4 | 19.4 | -60.0 | -76% |
| Overseas | 40.4 | 7.6 | -32.8 | -81% |
| Canada | 20.7 | 4.8 | -15.9 | -77% |
| Mexico | 18.3 | 7.0 | -11.3 | -62% |
| Travel Spending and Trade (\$ billions) | | | | |
| Total Travel Exports | 233.5 | 83.3 | -150.2 | -64% |
| Travel Spending + Passenger Fares | 179.1 | 38.1 | -141.0 | -79% |
| Travel Spending | 139.0 | 26.5 | -112.4 | -81% |
| Passenger Fares | 40.1 | 11.5 | -28.6 | -71% |
| Education and other | 54.3 | 45.2 | -9.1 | -17% |
| Total Travel Imports | 182.4 | 48.2 | -134.1 | -74% |
| Travel Trade Balance | 51.1 | 35.1 | -16.0 | -31% |
| Jobs supported (millions) | | | | |
| Direct Travel Jobs | 1.2 | 0.4 | -0.8 | -70% |

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APP 057

How Bad Are Covid-19 Pandemic Effects On Airbnb Guests, Hosts?

Lea Lane 09:49am EDT

Travel

Award-winning travel writer/photographer/podcaster, 100-plus countries



Business is way off.

Anadolu Agency via Getty Images

More From Forbes

The travel industry has been ⁵⁸closed, from flights, to cruises, to

lodging. And Airbnb and short-term rental property owners have felt the devastating effects of Americans putting travel on hold due to Covid-19.

Americans have been choosing to limit travel, and some states and local governments have put restrictions on short-term rentals. Airbnb hosts have had to adjust both short-term and long-term revenue estimates.

IPX 1031 recently surveyed part-time and full-time Airbnb hosts as well as guests who have used the platform. Here's a summary of the current situation:

- 47% of hosts don't feel safe renting to guests while 70% of guests are fearful to stay at an Airbnb.
- 64% of guests either have cancelled or plan to cancel an Airbnb booking since the pandemic started.
- Airbnb hosts expect a 44% decrease in revenue June-August. Hosts have dropped their daily rates as much as \$90 on average.
- 45% of hosts won't be able to sustain operating costs if the pandemic lasts another 6 months (16% have already missed or delayed a mortgage payment on one or more of their properties).
- On average, hosts have lost \$4,036 since Covid-19 began to spread in the US.

These revenue losses have led 41% of hosts to supplement their income with another job or revenue stream for the time being. Hosts have also gotten creative with their properties with 47% offering month-long stay options, and 29% listing their properties at reduced prices to first-responders and front-line personnel including as medical professionals.

59

APP 059

Some hosts have opted to list their properties on the long-term rental market such as Zillow, Craigslist or Apartments.com for 3-, 6- or 12-month leases.

Almost half of the respondents who have been Airbnb guests said they canceled their spring bookings, while 24% canceled bookings planned for this summer.

While uncertainty remains, both guests and hosts remain optimistic. Twenty-six percent of guests said they'll feel safe booking again this summer. Overall, 37% of hosts believe guests will return this fall.

In the meantime, online activities led by Airbnb hosts include everything from online cooking classes to dancing lessons. Thirty percent of Airbnb travelers surveyed said they've taken part in these virtual experiences, which provide an additional revenue source for hosts without them having to leave the house.

Follow me on [Twitter](#) or [LinkedIn](#). Check out my [website](#) or some of my other work [here](#).

42. **Question:** UIPL No. 16-20 provides an example of a driver for a ridesharing service who is forced to significantly limit his or her performance of customary work activities because of the COVID-19 public health emergency, such as if a state or municipal order restricting movement makes continued operations unsustainable, indicating that he or she may be eligible for PUA under section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. Does this apply to other types of independent contractors?

Answer: Yes. An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act. This includes an independent contractor who experiences a significant diminution of work as a result of COVID-19.

G. Eligibility – Ongoing

43. **Question:** Must a state's Notice of Determination list all the COVID-19 related eligibility criteria an individual did not satisfy?

Answer: No. If the state deems an individual ineligible, the Notice of Determination could be simple: "Based on our investigation and the available information, you are not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified under section 2102(a)(3)(A)(ii)(I) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act."

44. **Question:** Is PUA eligibility determined on a weekly basis like DUA?

Answer: Yes.

45. **Question:** What action must the state take during the continued claim filing process to assess whether an individual continues to satisfy one of the COVID-19 related eligibility criteria listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act?

Answer: The requirements are substantially the same as those discussed in Question #27. At the time of filing a continued claim, the state must ensure that an individual completes a self-certification form (either paper or online) that includes:

- The identification of the applicable COVID-19 related reason(s) under section 2102(a)(3)(A)(ii)(I) of the CARES Act, and
- A notice advising the individual that intentional misrepresentation on the self-certification is fraud.

Additionally, separate from the self-certification, states must provide the individual with a request for acknowledgement that he or she understands that the certification is under penalty of perjury. Examples of this separate acknowledgement include checking a box at the time of submission or checking a box in a pop-up message.

Consistent with federal and state laws on employment of minors, there may be restrictions on the number of hours, days, and types of work an individual may perform. If federal and state laws on restricting minors' employment do not make it illegal to employ the individual, and the individual meets the state's able and available requirements, the individual may be eligible for PUA.

7. **Question:** My state generally finds that a corporate shareholder is not "unemployed" because he or she continues to act on behalf of the company. Is a corporate shareholder eligible for PUA?

Answer: It depends. If the individual is a corporate shareholder and providing services for the corporation, the individual may be eligible for regular UC, depending on state law. If the individual performed services for the corporation and received compensation and is not eligible for regular UC, then he or she may be eligible for PUA, provided the individual is unemployed, partially unemployed, or unable or unavailable to work due to one or more of the COVID-19 related reasons listed in Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

8. **Question:** An individual is participating in work study and has directed that his or her wages be sent directly to pay the costs of tuition, room and board, and books. The individual is now unable to work due to a school closure because of COVID-19. Can he or she collect PUA?

Answer: An individual participating in work study who is not eligible for regular UC, whose worksite closed as a direct result of COVID-19, and who has suffered a loss of income, may be eligible for PUA.

9. **Question:** Is an incarcerated individual who is no longer participating in the work release program because the jail closed this program due to COVID-19 eligible for PUA?

Answer: No. The termination of a work release program is not an identified COVID-19 related reason in Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Further, the incarcerated individual is not "otherwise able to work and available for work within the meaning of applicable State law" because of his or her incarcerated status.

10. **Question:** Is a self-employed child care provider who is providing child care for fewer children as a result of the COVID-19 pandemic eligible for PUA?

Answer: If the self-employed child care provider can establish that he or she has experienced a significant diminution of his or her customary full-time services because of COVID-19, he or she may be eligible for PUA under the additional eligibility criterion established by the Secretary pursuant to Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. This individual's benefit amount may be reduced because of income from continued partial employment.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
OFFICE OF THE SECRETARY

DECISION

DATE OF APPEAL 02/04/2021

DATE OF DECISION 10/20/2021

IN THE MATTER OF THE APPEAL OF

CLAIMANT

Darcy Bracken
11807 18 Mile Road
Custer, SD 57730

CLAIMANT'S WITNESSES

Darcy Bracken

AGENCY'S WITNESSES

Jane Husman-Agency Representative

ISSUES

Pandemic Unemployment Assistance
Eligibility & Overpayment

Pursuant to SDCL 61-7-12, the Secretary hereby adopts the Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. The Administrative Law Judge's Decision, therefore, is the final decision of the Department of Labor and Regulation.

If you wish to appeal to Circuit Court, you must do so directly with the Circuit Court in your county of residence within thirty (30) days of the date of this Secretary Decision.

Dated this 17 day of November, 2021.

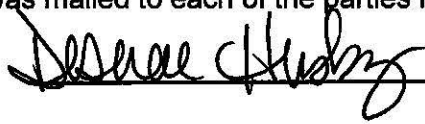
BY THE SECRETARY



Marcia Hultman
South Dakota Department of Labor and Regulation

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2021, at Aberdeen, South Dakota, a true and correct copy of this Decision was mailed to each of the parties listed below.



Darcy Bracken
11807 18 Mile Road
Custer, SD 57730

South Dakota Reemployment
Assistance Division
PO Box 4730
Aberdeen, SD 57402

NOTICE OF APPEAL

December 3, 2021

State of South Dakota In Circuit Court
County of Custer, Seventh Judicial Circuit
Darcy Bracken, Appellant

RECEIVED

DEC 06 2021

Labor & Regulation
RA Appeal

Please take notice, that the Appellant, Darcy Bracken, appeals to the 7th Judicial Court of South Dakota from the final judgment Decision Appeal No. 82394 dated October 20, 2021, and Appeal 84205 dated November 17, 2021.

A handwritten signature in cursive script, appearing to read "Darcy Bracken", is written over a horizontal line.

Darcy Bracken
11807 18 Mile Rd.
Custer, SD 57730

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) SS.
 COUNTY OF CUSTER) SEVENTH JUDICIAL CIRCUIT
 FILE CIV21-92

_____)
 DARCY BRACKEN,)
)
 Petitioner,)
)
 vs.) OTHER HEARING
)
 SOUTH DAKOTA DEPARTMENT OF)
 LABOR AND REGULATION,)
 RE-EMPLOYMENT ASSISTANCE)
 DIVISION,)
)
 Respondent.)
 _____)

BEFORE: THE HONORABLE JOSHUA K. HENDRICKSON
 Circuit Court Judge
 Custer County Courthouse
 Custer, South Dakota
 May 26, 2022

APPEARANCES:

FOR THE PETITIONER: MS. DARCY BRACKEN
 Pro se
 Custer County
 Custer, South Dakota

FOR THE RESPONDENT: MR. SETH LOPOUR
 (Telephonic) Attorney at Law
 Minnehaha County
 Sioux Falls, SD

1 (Whereupon the following **telephonic**
2 proceeding was held in the courtroom.)

3 THE COURT: All right. On the record in
4 civil file 21-92, Darcy Bracken vs. South Dakota
5 Department of Labor and Regulation, Re-employment
6 Assistance Division. Ms. Bracken appears
7 personally, pro se; the South Dakota Department of
8 Labor appearing through their attorney --

9 Is it Mr. Lopour?

10 THE RESPONDENT: Yes, that's right,
11 Your Honor.

12 THE COURT: Thank you.

13 -- Mr. Lopour who is appearing
14 telephonically with approval of the Court.

15 This is the time for a hearing on the
16 appeal filed by Ms. Bracken of the Department's
17 ruling on the underlying issue here. I'll note
18 that I've reviewed the brief submitted by the
19 appellant along with the exhibits, as well as the
20 appellee's brief. I've considered those.

21 At this time I'll let either side make any
22 argument they want to include, at this point, if
23 you wish. You don't have to if you don't want to,
24 but if you want to make an oral argument at this
25 time I'll give you time to do that.

1 Ms. Bracken, anything you would like to
2 add at this point -- I'll note that I've read your
3 brief so I don't want you to just re-read that on
4 the record, but if you have anything else to put on
5 the record at this point I'll give you a chance to
6 do so.

7 THE PETITIONER: Okay. Thank you, Your
8 Honor. There's a couple of things I would like to
9 say.

10 THE COURT: Go ahead.

11 THE PETITIONER: First of all, in
12 Mr. Lopour's brief he said that I failed to timely
13 request a transcript of the administrative hearing
14 that was held last October. I wish to say that I
15 did request one when I filed for the appeal on
16 December 3rd. I spoke with the Clerk of Courts and
17 said that I believed a transcript needed to be
18 ordered, and she said, yes, that it would
19 automatically happen and it would be done digitally
20 and that they would contact me when that came
21 through. When I did get something from the Clerk
22 of Courts, I thought that's what -- I thought it
23 was the transcript. So I apologize that it wasn't
24 but I did think that's what that was, and
25 Mr. Lopour said that's a certified record instead.

1 So I just wanted to clarify that.

2 THE COURT: All right.

3 THE PETITIONER: I would also like to give
4 you a little bit of background on myself. I'll
5 just admit that this is my first time in the
6 courtroom, other than doing grand jury duty a few
7 years ago.

8 I spent 30 years in government contracting
9 as a contract specialist, and during that time I
10 had secret clearance twice. The last three years
11 of that career I was in the Army and was in
12 Afghanistan for seven months during that time. I
13 have a Master's degree in organizational leadership
14 and a Bachelor's degree in business management. My
15 husband had retired from 30 years in law
16 enforcement, and I decided I was done working for
17 someone else so we decided to -- I decided to
18 change careers and be my own boss.

19 We opened White Tail Ridge Bed & Breakfast
20 in 2012 here in the Black Hills. We operated that
21 for nine years, and it was the number one source of
22 income for me. I didn't have time to work outside
23 of that business. It was the type of bed and
24 breakfast where we lived in the business. It was a
25 very large home and was not something that we could

1 otherwise afford to live in if we didn't have that
2 income from the business, a home-based business.
3 We operated it year around. We worked very hard.
4 My husband and I worked very hard to build that
5 business. And, in fact, the last three years we
6 were considered the number one bed and breakfast in
7 the Black Hills according to Trip Advisor. I just
8 wanted to mention that because it was not a hobby.
9 This was my sole income and we worked very hard to
10 make it successful.

11 2020 was a very, very tough year, for
12 everyone I'm sure, but it was for us, especially
13 for the business, because of the pandemic and only
14 because of the pandemic that year. It was another
15 tough year because my mom passed away that year as
16 well. We struggled through 2020 and because of
17 that we decided to move our retirement up a few
18 years. So February 1st of 2021 we closed our
19 business, sold our property and moved south of
20 Custer.

21 Since then -- that was about 14 months ago
22 that we moved -- we've been living in a tiny cabin
23 for 14 months struggling to get someone to build us
24 a home. And as most of us are aware because of
25 inflation and everything else happening, it's been

1 difficult to get someone to build that house, both
2 with labor and materials. And that home is going
3 to cost us a lot more than we originally thought
4 just because of that.

5 So I just wanted to give you some
6 background on me, since I'm not an attorney, and
7 let you know I'm not just a hick sitting here
8 pretending to be one. I do have an education and
9 some sound background in government contracting and
10 that has helped me represent myself.

11 That's what I wanted to say upfront,
12 Your Honor.

13 THE COURT: I appreciate the comments and
14 I will note, for what it's worth, that I normally
15 don't see pro se litigants that have put together
16 quite a brief as well as you did, really.

17 THE PETITIONER: Thank you.

18 THE COURT: So it doesn't appear this is
19 your first time, I'll tell you that. It doesn't
20 seem like this is the first time for you from what
21 I've seen.

22 THE PETITIONER: Thank you.

23 THE COURT: So I commend you on that. You
24 did do a nice job putting that together.

25 So anything else you want to say in

1 regards to the appeal?

2 THE PETITIONER: Yes, sir. I would like
3 to respond to a comment that Mr. Lopour had in his
4 brief, if that's okay.

5 THE COURT: Go ahead.

6 THE PETITIONER: I think that most of what
7 he said I have already argued in my brief, so I
8 won't regurgitate all that, but I would like to say
9 on page 6 of his brief on the -- well, it starts
10 with the paragraph that says, *Simply put, there is*
11 *no evidence.* He goes on to say, *Rather, Claimant*
12 *asks this Court and the Department to make the*
13 *inference and the assumption that, although the bed*
14 *and breakfast never closed, that its reduction in*
15 *guests for the entire period of benefits paid was*
16 *'because of' COVID-19.* However, the record is
17 *devoid of, and Claimant did not produce,*
18 *correspondence from guests that cancelled because*
19 *of COVID-19.* Claimant did not provide any evidence
20 *that guests re-scheduled their stays because of*
21 *COVID-19.* And, *Further, Claimant did not*
22 *experience a COVID-19 outbreak at the bed and*
23 *breakfast.*

24 I just wanted to speak to that, that first
25 of all those are incorrect. Those were not

1 required as part of my eligibility, but if they
2 were the Department of Labor didn't request any of
3 that information from me ever. The only thing they
4 requested from me for my application for benefits
5 was to certify that we did have a reduction in
6 services because of COVID-19. And also that --
7 they also asked me to provide a tax return from
8 2019, which I did. And no time since have I been
9 asked for anything that supports my claim of a
10 reduction in services, and if it was that important
11 it should have been asked from the very beginning,
12 although my opinion is that the CARES Act does not
13 imply or suggest that any of that is necessary to
14 receive benefits.

15 Thank you, Your Honor.

16 THE COURT: Thank you.

17 Mr. Lopour, anything you want to put on
18 the record at this point?

19 THE RESPONDENT: Yes, Your Honor. I'll
20 keep it brief.

21 Based on Claimant's comments in the brief
22 it does appear that it's uncontested, that Claimant
23 does not qualify for PUA benefits under subsection
24 (aa) through (jj), "J" as in John, and that we're
25 really only talking about (kk)(1). That is the

1 self-employed individual who experienced a
2 significant diminution in their customary or usual
3 business services because of COVID-19.

4 Your Honor, Claimant's argued -- well, let
5 me back up, Your Honor. First of all, Claimant had
6 the opportunity to file a reply brief and raise
7 this issue with the Court. I understand she's pro
8 se. She did not file a reply brief. But I guess
9 addressing head on that, you know, she didn't
10 produce documentary evidence that she was closed
11 because of COVID-19, at the end of the day,
12 Your Honor, it's Claimant's burden at the
13 administrative hearing to establish that she is
14 eligible under the PUA -- or under the CARES Act.
15 I understand that she testified that she had a
16 reduction in business. She also attached to her
17 brief a spreadsheet from -- the financial's from, I
18 believe, 2020 and 2021, if I'm not mistaken.
19 Although that spreadsheet does not appear anywhere
20 in the record except for her brief -- so it would
21 be the state's position that it's an expansion of
22 the record on appeal. But even if the Court were
23 to consider that, it would see that the number of
24 reservations the bed and breakfast had in those two
25 years were reduced by 18 or fewer. I believe there

1 were somewhere around 120 reservations in 20 -- let
2 me pull it up here, Your Honor. In 2019 there were
3 122 reservations. In 2020 there were 106
4 reservations.

5 Your Honor, it would be the state's
6 position that that reduction is not a significant
7 diminution of customary usual services because of
8 COVID-19, first of all because of the quantity
9 concerned, and second of all because the Claimant
10 hasn't given any concrete proof to the Department
11 or this Court that the reservations that were
12 cancelled, or if there was a slow down, that it was
13 directly related to COVID-19. There's nothing in
14 -- affecting the bed and breakfast that forced it
15 to close. It remained open. It advertised it was
16 open. It is just the Department's position,
17 Your Honor, that more evidence is needed to prove
18 up eligibility.

19 Thank you.

20 THE COURT: All right.

21 Ms. Bracken, as it's your appeal I'll give
22 you the last word if you would like on that.

23 THE PETITIONER: The bed and breakfast
24 business isn't just measured on number of
25 reservations, and it's hard to -- while we did have

1 concrete cancellations of course, those were for
2 the folks that had booked with us early on. The
3 pandemic was declared in March and the
4 cancellations started coming in, and then we got no
5 new reservations. Those are hard to quantify.
6 Simply it's based on our experience. We are in a
7 seasonal, wonderful tourism area and the
8 reservations usually start coming in, you know, not
9 only February, March but April, May, et cetera, and
10 they just didn't. While we did have some more come
11 in later in the year -- thank goodness -- we took
12 steps to encourage folks to feel comfortable
13 staying with us. Our intent was not to close. We
14 were not required to close. Why would we close?
15 We had a business to run. We had an income to
16 consider. So closing was against our good
17 conscience to do that. But we did try to take
18 steps to encourage folks to feel a little more safe
19 and comfortable with us by closing -- we had three
20 bedrooms and we made sure that we were never full
21 so folks had space. We reduced our nightly rates
22 so that people would be a little more encouraged.
23 We took a lot of steps that cost us extra money to
24 sanitize and to buy additional furniture so there
25 would be more space at breakfast, just a number of

1 things like that. So to just -- for him to just
2 suggest that the number of reservations is the only
3 measure is incorrect. As you can see, our revenue
4 was down by 22 percent and our costs were up. That
5 was all because of the pandemic.

6 To, you know, say that *because of*, the
7 wording *because of*, doesn't apply to us just
8 doesn't make sense to me. We all lived through
9 2020. We all knew that everyone was affected by a
10 pandemic. Tourism and travel is the number two
11 industry in our state. Of course it was hit. It
12 was hit hard. I've provided data from the travel
13 association to that effect. We had no
14 International guests that year because there was no
15 International travel. If people could travel they
16 didn't want to take the chance.

17 So my reply to that suggestion that I
18 should provide more, again, that wasn't asked from
19 me in the beginning. I have provided what I can,
20 and the numbers that we provided to the IRS showed
21 that our revenue was substantially down, and that
22 on the other hand we took measures, as much as we
23 could, to prevent it from bankrupting us and having
24 to close our doors because of that. We put a lot
25 of sweat equity into that business, and

1 Governor Noem didn't require us to close our doors
2 so we did not.

3 Thank you.

4 THE COURT: Thank you.

5 All right. Having reviewed the briefs
6 submitted by parties and considered arguments
7 today, I need to make a ruling on the appellate
8 issue here before the Court. It's one of these as
9 I sit here today, ma'am, that I -- well, it leaves
10 a bad taste in my mouth because the -- the reason
11 why is I have to, I believe, affirm the decision,
12 meaning finding for the Department of Labor in this
13 instance. That's not because I think they're right
14 and I think you are wrong. I probably -- if I was
15 making the decision at the general level there
16 I might be more on your side than not, but the
17 standard of review on the appellate issue is a
18 clearly erroneous standard and I have to apply that
19 law to what's before the Court on this instance.
20 And using that standard it's not a de novo review.
21 It's not -- that doesn't mean that I look at
22 everything and rule on how I would have ruled if
23 you were eligible or not. But, whether or not by
24 the clearly erroneous standard, that means that
25 whether or not the Administrative Law Judge in this

1 hearing had enough in front of him to rule the way
2 he did. If he didn't then that would be clearly
3 erroneous, but based upon what I reviewed I find
4 that -- that's a higher burden to overcome and I
5 don't think it's been established that it was a
6 clearly erroneous decision. You may disagree with
7 that. But I think the ALJ had a basis for its
8 findings and, as such, I have to rule that the
9 clearly erroneous standard isn't met and I have to
10 affirm the Administrative Law Judge's decision in
11 that regard. I don't like doing that. I'm sorry I
12 have to. I don't know how your business wouldn't
13 be affected by Covid, but based on the record I've
14 reviewed I can't make that a clearly erroneous
15 finding. You might find that at odds, the
16 statements, with each other, but that's the way I
17 see it and I'm sorry that I have to rule that way.
18 But that will be the order of the Court, to affirm
19 the ALJ's decision.

20 Mr. Lopour, I would ask that you provide
21 an order affirming that and send that to the Court
22 for signature and I'll make that part the court
23 file at that point.

24 THE RESPONDENT: Thank you, Your Honor.

25 THE COURT: Any questions from either

1 side?

2 THE RESPONDENT: No, Your Honor.

3 THE PETITIONER: No.

4 THE COURT: Thank you.

5 Best of luck to you, Ms. Bracken.

6 THE PETITIONER: Thank you.

7 THE COURT: Once that's filed you may have
8 other options, at that point. If you wish to
9 further appeal you'll have to consult an attorney
10 or look on that to do that though, all right?

11 THE PETITIONER: Okay.

12 THE COURT: With that we'll be adjourned.
13 Thank you.

14 THE RESPONDENT: Thank you.

15 THE PETITIONER: Thank you.

16 (End of proceedings.)
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25

1 STATE OF SOUTH DAKOTA)
2) SS. CERTIFICATE
3 COUNTY OF PENNINGTON)

4 I, BRIDGETTE R. BANKS, Official Court
5 Reporter, hereby certify that the foregoing pages
6 one through 16, inclusive, are a true and
7 correct transcript of my stenotype notes.

8 Dated at Rapid City, South Dakota,
9 this 14th day of September, 2022.

10
11
12
13 /s/ Bridgette R. Banks

14 _____
15 Bridgette R. Banks
16 Official Court Reporter
17 My commission expires: 3/14/2024
18
19
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25

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

16CIV21-000092

Claimant/Appellant,

ORDER

FILED
7TH JUDICIAL CIRCUIT COURT
CUSTER COUNTY, SD

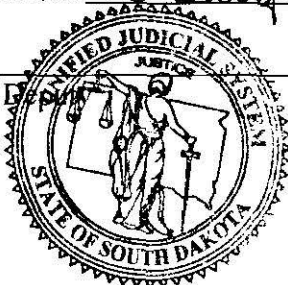
MAY 31 2022

By: ds

Dated this 31st day of May, 2022.

Honorable Joshua K. Hendrickson
Circuit Court Judge

By



IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Appeal No. 30041

DARCY BRACKEN,

Appellant,

v.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION,
REEMPLOYMENT ASSISTANCE DIVISION,

Appellee.

Appeal from the Circuit Court
Seventh Judicial Circuit
Custer County, South Dakota

THE HONORABLE Joshua K. Hendrickson
Presiding Circuit Court Judge

APPELLEE'S BRIEF

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Notice of Appeal Filed on June 29, 2022

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PRELIMINARY STATEMENT

Throughout this brief, Appellant, Darcy Bracken, will be referred to as “Bracken.” Appellee, South Dakota Department of Labor and Regulation, Reemployment Assistance Division will be referred to as “Department.” The Custer County Clerk of Courts’ record will be referred to by the initials “CR” and the corresponding page numbers located in its July 8, 2022, Chronological and Alphabetical Indices. References to the argument during the May 26, 2022, hearing before Judge Hendrickson will be made using (HT) followed by the page designation found in the hearing transcript. Bracken failed to timely request a transcript of the October 14, 2021, administrative hearing, thus no transcript is available for the Court’s consideration on appeal.

JURISDICTIONAL STATEMENT

Department agrees with Bracken’s Jurisdictional Statement and reincorporates the same as if fully set forth herein.

STATEMENT OF THE ISSUE

1. Whether the Circuit Court erred by affirming the ALJ McCabe’s holding that Bracken is ineligible for Pandemic Unemployment Assistance benefits when she failed to produce any financial or documentary evidence to support eligibility under (kk)(1).

Coronavirus Aid, Relief, and Economic Security (CARES) Act (15 U.S.C. § 9021(a)(3))

Martin v. Department of Workforce Services, 507 P.3d 847 (Ct. App. Utah 2022)

STATEMENT OF THE CASE

The Department issued a Determination Notice on January 25, 2021, informing Bracken that she was ineligible for Pandemic Unemployment Assistance (“PUA”)

benefits for the period commencing June 28, 2020, because she was not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified under § 2102(a)(3)(A)(ii)(I) of the CARES Act. (CR 23.)

Bracken appealed this Determination Notice, and an administrative hearing was held on October 14, 2021, before Administrative Law Judge Gerald M. McCabe (“ALJ McCabe”). (*Id.* at 67-71.)¹ Bracken appeared and testified as a witness. (*Id.* at 67.) Jane Husman appeared on behalf of the Department. (*Id.*) ALJ McCabe issued a written decision on October 20, 2021 and held that Bracken is not eligible for PUA benefits and that Bracken was overpaid \$14,080 in benefits. (*Id.* at 70.)

Bracken appealed the decision of ALJ McCabe to the Department Secretary, Marcia Hultman, on November 2, 2021. (*Id.* at 72-82.) The Secretary affirmed ALJ McCabe’s decision on November 17, 2021. (*Id.* at 83.) Bracken filed a Notice of Appeal with the Circuit Court for the Seventh Judicial Circuit on December 3, 2021. (*Id.* at 85.)

On May 26, 2022, a hearing was held before Judge Joshua Hendrickson on Bracken’s administrative appeal. On May 31, 2022, Judge Hendrickson issued an Order, affirming ALJ McCabe’s decision, in full. (*Id.* at 140.) On May 31, 2022, Department filed a Notice of Entry of the same. (*Id.* at 141-143.) On June 29, 2022, Bracken filed a Notice of Appeal with this Court. (*Id.* at 146-148.)

STATEMENT OF THE FACTS

Bracken filed a claim for PUA benefits on April 20, 2020. (*Id.* at 34.) At the time, Bracken was self-employed and operated White Tail Ridge Bed and Breakfast,

¹ Bracken did not appeal the Determination of Overpayment or seek a waiver of her overpayment, thus, whether or not she qualifies for a waiver was not before ALJ McCabe and has not been preserved for this Court. (CR, at 25-34.) Similarly, whether or not Bracken was at fault in receiving the overpayment is not relevant. (*Compare to* Br. of Appellant, at 12.)

LLC. (*Id.* at 36.) Bracken indicated that she became unemployed as a result of COVID-19 on March 1, 2020. (*Id.*) However, Bracken admits that she and her husband were not infected with COVID-19. (*Id.* at 68, 95.) Nor was Bracken required to shelter in place at the direction of a physician. (*Id.* at 68.) Further, there were no local mandates that required the bed and breakfast to close. (*Id.*) In fact, Bracken's bed and breakfast never officially closed. (*Id.* at 67.) Instead, Bracken took proactive steps to keep it open and attract guests. (*Id.* at 63, 67, 95.) Bracken posted on the bed and breakfast's website that "[w]e are here and open for business." (*Id.* at 65.)

Bracken began making weekly requests for payment, with payments beginning the week of March 7, 2020 and ending August 8, 2020. (*Id.* at 25-27.) In total, Bracken received \$14,080 in PUA benefits.

As part of the Department's routine investigation, a representative contacted Bracken on January 8, 2021, and Bracken indicated that she "had a reduction in reservations, and practiced travel industry practices to close rooms for days in between guests. Our expenses were higher due to CDC recommended cleaning protocols." (*Id.* at 62-63.) At the administrative hearing before ALJ McCabe, Bracken did not submit any documentary evidence in support of her claim that she was eligible for PUA benefits under (kk)(1). Following ALJ McCabe's decision, Bracken timely commenced an appeal to circuit court and subsequently appealed the circuit court's decision to this Court.

STANDARD OF REVIEW

The Supreme Court's standard of review of agency proceedings is governed by SDCL § 1-26-37, which provides "[t]he Supreme Court shall give the same deference to the findings of fact, conclusions of law, and final judgment of the circuit court as it does

to other appeals from the circuit court.” *Baker v. Rapid City Reg'l Hosp.*, 2022 S.D. 40, ¶ 29, 978 N.W.2d 368, 377. Under this standard, “[t]his Court ‘makes the same review of the administrative agency's decision as did the circuit court, unaided by any presumption that the circuit court's decision was correct.’” *Boehrns v. S.D. Bd. of Pardons & Paroles*, 2005 S.D. 49, ¶ 5, 697 N.W.2d 11, 13 (citation omitted).

“SDCL § 1-26-36 delineates the standard for a circuit court's review of an administrative agency's decision, and ‘[t]he same rules apply on appeal to this Court.’” *Christenson v. Crowned Ridge Wind, LLC*, 2022 S.D. 45, ¶¶ 20-21, 978 N.W.2d 756, 762 (quoting *Anderson v. S.D. Ret. Sys.*, 2019 S.D. 11, ¶ 10, 924 N.W.2d 146, 148–49).

SDCL § 1-26-36 provides:

The court shall give great weight to the findings made and inferences drawn by an agency on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in light of the entire evidence in the record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Supreme Court applies the following standards of review to agency decisions:

Questions of law are reviewed de novo. *Dakota Trailer Mfg., Inc. v. United Fire & Cas. Co.*, 2015 S.D. 55, ¶ 11, 866 N.W.2d 545, 548. Matters of reviewable discretion are reviewed for abuse. SDCL 1-26-36(6). The agency's factual findings are reviewed under the clearly erroneous standard. SDCL 1-26-36(5). The agency's decision may be affirmed or remanded but cannot be reversed or modified absent a showing of prejudice. SDCL 1-26-36.

Christenson, 2022 S.D. 45, ¶ 21, 978 N.W.2d at 762 (quoting *Anderson*, 2019 S.D. 11, ¶ 10, 924 N.W.2d at 148–49).

ARGUMENT

1. The Department correctly found that Bracken did not qualify for PUA benefits.

PUA benefits are authorized under the CARES Act. Under this Act, eligibility for the benefits is determined 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;

15 U.S.C. § 9021(a)(3). With respect to (kk), additional criteria has been established as follows:

1. Self-employed individuals who experience a significant diminution in their customary or usual services because of the COVID-19 public health emergency;
2. Individuals who refuse to return to work that is unsafe or accept an offer of new work that is unsafe;
3. Certain individuals providing services to educational institutions or educational service agencies; and
4. Individuals experiencing a reduction of hours or a temporary or permanent layoff.

Unemployment Insurance Program Letter ("UIPL") No. 16-20, Changes 4-6. Bracken's appeal rests entirely on (kk)(1) and both of its requirements are in dispute: (1) a significant reduction in services; and (2) a causal connection of the reduction in services to COVID-19.

a. No Significant Reduction in Business

With respect to whether Bracken's bed and breakfast experienced a significant diminution of its customary or usual services, Bracken claims "it is undisputed that [it] was financially devastated by the pandemic." (Br. of Appellant, at 9.) This assertion is disputed as ALJ McCabe did not make a specific finding that Bracken's bed and breakfast experienced a "significant diminution" in business.

Further, Bracken did not provide any financial data to ALJ McCabe, representing the reduction in her business. In fact, it was not until this case was before Judge Hendrickson that Bracken produced any financial information to support such an argument. (CR at 119.) As argued to Judge Hendrickson, inclusion of the financial data for the first time in this appeal at the circuit court level was an improper expansion of the record and is similarly improper here. SDCL § 1-26-21. (*See also* HT at 9:16-22.)

Without such information, ALJ McCabe did not and could not make a finding that there was a significant reduction in business. There was no error below with respect to this prong of the (kk)(1) analysis.

b. No Causal Relation to COVID-19

With respect to the causation element of (kk)(1), the question becomes what evidence is sufficient to establish eligibility for PUA benefits.

ALJ McCabe held:

Although Claimant's business experienced a loss of guests during the COVID-19 pandemic, the evidence suggests that the reason for the loss of guests is because of indirect economic consequences from the COVID-19 public health emergency. Reductions in the number of travelers or a decreased demand for bed and breakfast rooms is, without more, properly considered an indirect result of the COVID-19 public health emergency. Claimant's business was not closed by a state or local order. Claimant was neither required to self-quarantine nor was Claimant diagnosed with COVID-19.

(CR, at 69.) Judge Hendrickson did not disturb this finding on appeal. ALJ McCabe's distinction between indirect and direct consequences of COVID-19 tracks with the guidance provided by the United States Department of Labor ("USDOL") which suggests that claimants must show that their qualifying condition under the CARES Act was a "direct result" of COVID-19.

When determining the appropriate course of action in administering the PUA program, states should first consult Section 2102 of the CARES Act, as amended by the Continued Assistance Act, and the subsequent operating instructions provided by the Department. Where the CARES Act, as amended, and the operating instructions are silent, states should refer to the Disaster Unemployment Assistance (DUA) regulations at 20 C.F.R. Part 625.

UIPL No. 16-20, Change 4, at 3.

The DUA explicitly defines “direct result” as “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.” 20 C.F.R. § 625.5(c). Thus, Bracken must prove that her significant reduction in business was an “immediate result” of COVID-19 and not the result of a longer chain of events precipitated or exacerbated by the same. 20 C.F.R. § 625.5(c). *See also* 20 C.F.R. § 625.5(a)(1) (explaining that unemployment is “caused” by a major disaster if “such unemployment is a direct result of the major disaster.”); UIPL, No. 16-20, Attachment 1, at I-6 (April 5, 2020) (explaining that an individual seeking benefits under (kk) must establish that he or she experienced a significant reduction in work as a direct result of the COVID-19 public health emergency). Thus, the alleged secondary consequences of the pandemic (customers choosing to limit travel, customers’ fear of COVID-19, etc.) and their impact on Bracken do not qualify as a direct result.

Although caselaw in this area is sparse,² the Utah Court of Appeals, in *Martin v. Department of Workforce Services*, has explicitly adopted and agreed with this analysis:

² Bracken misrepresents Department’s prior representations regarding the caselaw on this issue. (Br. Appellant, at 11.) Rather than conceding no caselaw exists to support ALJ McCabe’s position, the

The DOL has stated that a self-employed individual may be eligible for PUA benefits under subsection (kk) if the individual “experiences a significant diminution of work as a result of COVID-19.” Unemployment Insurance Program Letter No. 16-20, Change 1, at I-11 (April 27, 2020) (cleaned up). This requires a claimant to show that the “ability to continue performing his or her customary work activities is *severely limited* because of the COVID-19 public health emergency.” Unemployment Insurance Program Letter No. 16-20, Change 2, at 2 (July 21, 2020) (emphasis added). Further, the DOL has indicated that, under subsection (kk), a claimant's reduction of work must be the “direct result of the COVID-19 public health emergency.” Unemployment Insurance Program Letter No. 16-20, at I-6 (April 5, 2020). A “determination about whether actions are a ‘direct result’ ... should be made based on” the DUA regulation found at 20 C.F.R. 625.5(c). *Id.* at I-7. That regulation, in turn, instructs that unemployment is considered a direct result of a major disaster if “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.” 20 C.F.R. § 625.5(c).

507 P.3d 847, 851 (Ct. App. Utah 2022) (emphasis added).

In *Martin*, the appellant was denied PUA benefits and held at fault for the overpayment by the state’s Workforce Appeals Board. *Id.* at 848. On appeal, the appellant argued that he qualified for PUA benefits under (kk) because he was teaching English online and that his client numbers declined due to COVID-19. *Id.* However, the appellant did not provide sufficient evidence for the appellate court to overturn the Board’s decision:

The Board found that there was insufficient evidence to demonstrate that any decrease in students for Martin's online teaching business was caused by COVID-19. Martin asserted that he lost students because of COVID-19, which caused a decrease in revenue. When asked about how he knew this was the case, Martin speculated that “people turned to online work and ... I don't think people ... made English learning a priority for their kids maybe, I don't know, ... I don't have an answer for that.”

Based on this evidence, the Board was justified in concluding that Martin had not carried his burden of demonstrating that his loss of income

Department previously represented that it could not locate caselaw defining the term “because of” as used in (kk)(1). (*See* CR, at 134.) Since this filing, Department is still unable to find such caselaw.

occasioned by fewer students taking his class was a direct immediate result of COVID-19. Any number of other circumstances could have caused the decrease in numbers, even if those circumstances may have been exacerbated by COVID-19. Ultimately, the Board did not err in determining that under the CARES Act, Martin was entitled to PUA under subsection (kk) only if he sustained a significant diminution of work as a direct result of COVID-19. Further, because there was evidence to support its determination that Martin failed to demonstrate that his diminution in work was caused by COVID-19, we defer to the Board's decision.

Id. at 851-52 (emphasis added). Similarly, here, Bracken bears the burden on this appeal and more is required of her than inferences or assumptions on behalf of her customers to qualify for PUA benefits.

To that end, the record before this Court is in a unique posture as no transcript is available from the October 14, 2021, administrative hearing. Thus, the record does not contain any of Bracken's testimony, rather, this Court's review is essentially limited to ALJ McCabe's decision and the documents that comprised the record—given the absence of a written decision by Judge Hendrickson.

Even assuming there was a significant reduction in business, there is no evidence in the record that conclusively establishes the reduction was a direct result of COVID-19. Bracken admitted that neither she nor her husband contracted COVID-19, no mandates forced the closure of her business, and she was not forced to shelter in place because of COVID-19. (CR at 63, 67-68, 95.) Most importantly, the bed and breakfast never closed. (*Id.* at 63, 65-66.) Instead, it remained open and advertised it was open. Simply put, there is no evidence in the record to support a finding that COVID-19 directly caused a reduction in Bracken's business.

Even if this Court refused to apply the direct/indirect analysis as provided in the USDOL guidance, there is simply a complete failure of evidence to support a causal

finding under (kk)(1) that Bracken's reduction in business was "because of" COVID-19. The record is devoid of, and Bracken has not produced, any emails, texts, letters or other records from any of Bracken's customers that they canceled, rescheduled, or refused to book with Bracken "because of" COVID-19. Bracken offered no other witness testimony through Affidavit or live at the hearing before ALJ McCabe, from customers who canceled or refused to book with her "because of" COVID-19. Nor has Bracken provided any contemporaneous notes from her files that rooms were canceled by customers "because of" COVID-19. If this happened, these notes should be readily available. Instead of offering evidence to ALJ McCabe, Bracken only offered her own testimony and essentially asks this Court to make an inference regarding the same. Bracken's bare assertions are not enough to overturn the findings below.

Bracken is essentially seeking judicial notice of the impact of COVID-19 on her business. Making such an inference for Bracken would be an improper exercise of judicial notice and would lessen the burden she has to be entitled to benefits under the CARES Act. SDCL § 19-19-201. The Department obviously does not contest that the COVID-19 pandemic occurred. However, its impact and the causal relation between COVID-19 on an individual business cannot be assumed—especially in a state that did not shut down and remained relatively open for business. Although Bracken argues the CARES Act is a remedial statute subject to liberal construction, it is well settled that the "rule of liberal construction . . . applies only to the law and not to the evidence offered to support a claim." *Lawler v. Windmill Rest.*, 435 N.W.2d 708, 709 (S.D. 1989) (citing *Wold v. Meilman Food Indust.*, 269 N.W.2d 112, 116 (S.D. 1978)). Such construction does not solve the evidentiary absence created by Bracken.

Furthermore, there could be any number of reasons that people did not book rooms, rescheduled, or canceled reservations with Bracken, including: cost, competitive pricing at other locations, scheduling conflicts, family issues, weather, travel restrictions, fear of COVID-19, etc. The problem in this case is that there is no evidence to support any of these findings and determining the cause for the alleged downturn in business is pure speculation. The only evidence to support the argument that there was a reduction in business because of COVID-19 is Bracken's testimony, which we do not have.

Rather, Bracken asks this Court and the Department to make the inference and assumption that, although the bed and breakfast never closed, its reduction in guests for the entire period of benefits paid was "because of" COVID-19. Bracken bears the burden on this appeal and more is required than inferences or assumptions to qualify for PUA benefits. Simply put, there is no evidence in the record that conclusively establishes that the bed and breakfast "experienced a significant diminution in [its] customary or usual services because of the COVID-19 public health emergency."

Given the constrained record and failure to produce evidence, Department respectfully requests this Court affirm Judge Hendrickson's decision that Bracken was not eligible for PUA benefits.

CONCLUSION

For these reasons, Appellee respectfully requests this Court affirm Judge Hendrickson's decision, in full.

Dated this 29th day of December, 2022.

WOODS, FULLER, SHULTZ & SMITH P.C.

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REQUEST FOR ORAL ARGUMENT

Appellee respectfully requests the opportunity to present oral argument on these issues.

Dated this 29th day of December, 2022.

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CERTIFICATE OF COMPLIANCE

In accordance with SDCL § 15-26A-66(b)(4), the undersigned certifies that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word 365, Times New Roman (12 point) and contains 3,730 words, excluding the table of contents, table of authorities, and certificates of counsel. The undersigned has relied on the word and character count of the word-processing program to prepare this certificate.

Dated this 29th day of December, 2022.

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I hereby certify that on the 29th day of December, 2022, a true and correct copy of the foregoing Appellee's Brief was electronically filed via Odyssey File & Serve system, which will automatically send email notification of the same to the following:

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**IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA**

No. 30041

DARCY BRACKEN,

Appellant,

vs.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION,
REEMPLOYMENT ASSISTANCE DIVISON,

Appellee.

Appeal from the Circuit Court
Seventh Judicial Circuit
Custer County, South Dakota
The Honorable Joshua K. Hendrickson, Presiding Judge

REPLY BRIEF OF APPELLANT

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Oral Argument Requested

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ARGUMENT

1. The ALJ's decision should be reversed because Bracken suffered a significant diminution in her customary and usual services caused by the COVID-19 public health emergency.

- A. *The record demonstrates a "significant diminution" in Bracken's business.*

DOL argues the ALJ's decision should be affirmed because there was no "specific finding" that Bracken's bed and breakfast experienced a "significant diminution" in business as required by the CARES Act. Appellee's Brief at 6. Further, DOL argues that since no "financial data" was given to the ALJ during the underlying hearing, there is no conceivable way Bracken can be successful on appeal. Appellee's Brief at 7. Both arguments are without merit and ignore the ALJ's actual findings.

Absent from Appellee's Brief is any detailed analysis on certain specific findings actually entered by the ALJ. As noted in Bracken's initial brief, the ALJ entered the following findings of fact based on evidence received at the hearing:

3. In February 2020, Claimant's business had no new reservations and many reservations from prior bookings were cancelled.
4. Claimant's business had no guests until the end of May 2020.

Appellant's App. 47. The ALJ also acknowledged in his decision that Bracken "experienced a loss of guests" during the pandemic. Appellant's App. 49. These findings were not appealed from by DOL.

While the precise term "significant diminution" was not used by the ALJ in his findings, it is clear the ALJ found Bracken's business suffered a "significant diminution" of business during the pandemic. Indeed, the ALJ found as a fact that customers cancelled reservations after the pandemic hit in February 2020 and that Bracken "had *no guests* until the end of May 2020." Appellant's App. 49 (emphasis added). Bracken

respectfully argues these findings, which DOL did not contest, clearly show a “significant diminution” in her business in accordance with the CARES Act provisions found at 15 U.S.C. § 9021(a)(3)(A)(ii)(I) (kk); U.I.P.L. No. 16-20, Change 4, U.I.P.L. No. 16-20, Change 5.

Further, while it is true there is no transcript for this Court to review of the hearing before the ALJ, Bracken advised DOL she had “no business” during the pandemic when she applied for benefits. Appellant’s App. 16. Bracken also advised in appeal documents she authored that her business was “hit hard by the pandemic” and she made “zero income” in 2020. Appellant’s App. 10. Bracken also testified live during the hearing and persuaded the ALJ that her business had no new guests through at least May 2020. Appellant’s App. 47. All of this leads to the inevitable conclusion that Bracken’s bed and breakfast, along with countless other American small business owners, suffered a significant diminution in business during the pandemic. This is precisely why she rightfully applied for PUA benefits authorized by Congress and DOL’s arguments to the contrary are without merit.

B. The significant diminution in business experienced by Bracken’s bed and breakfast was caused by the pandemic.

While it is clear Bracken’s bed and breakfast suffered a significant diminution in business, the ALJ somehow concluded that the reduction in business was merely the result of “indirect economic consequences from the COVID-19 public health emergency.” Appellant’s App. 49. For this reason, the ALJ determined Bracken was ineligible for benefits. *Id.* Appellant’s App. 49.

The term “indirect economic consequences” appears nowhere in applicable provisions of the CARES Act. Regardless, Appellee attempts to justify the ALJ’s use of

the manufactured term “indirect economic consequences” because such language “tracks” with guidance issued by the United States Department of Labor. Appellant’s Brief at 7. Bracken respectfully submits this argument is incorrect.

i. Common sense dictates Bracken’s business was harmed by the pandemic.

It defies common sense to suggest that Bracken’s business was devastated during the pandemic for reasons unrelated to the pandemic, or for reasons “indirectly” caused by the pandemic. To the contrary, Bracken and millions of other Americans were financially harmed by the pandemic. Indeed, the financial devastation caused by the COVID-19 public health emergency is the reason Congress passed the CARES Act in the first place. *See In the Matter of Hayat Muse*, 956 N.W.2d 1, 3-4 (Minn. Ct. App. 2021) (stating the CARES Act provides Pandemic Unemployment Assistance for up to 39 weeks to unemployed individuals not normally entitled to unemployment benefits and that when interpreting the Act a reviewing court must “give effect to the will of Congress.”).

Moreover, this Court has made clear in many contexts that courts can and do draw upon their common sense when analyzing issues brought before it. *See Kaiser Trucking, Inc. v. Liberty Mut. Fire Ins. Co.*, 2022 S.D. 64, ¶ 29, 981 N.W.2d 645, 656 (explaining, on a motion to dismiss, the Court must “draw on its judicial experience and common sense”); *State v. Sound Sleeper*, 2010 S.D. 71, ¶ 16, 787 N.W.2d 787, 791 (“We use a common-sense and non-technical approach to determining reasonable suspicion”); *Clark County v. Sioux Equipment Corp.*, 2008 S.D. 60, ¶ 15, 753 N.W.2d 406, 412 (applying a “common sense test” when determining whether an addition constituted an improvement

to real property) *Westmed Rehab, Inc. v. Dep't of Soc. Servs.*, 2004 S.D. 104, ¶ 10, 687 N.W.2d 516, 519 (“To give the phrase any other interpretation strains common sense”).

Here, common sense dictates that Bracken’s business suffered a significant financial loss because of the pandemic. As a result, she was entitled to receive PUA benefits and the ALJ should be reversed.

ii. DUA regulations are irrelevant and need not be considered.

DOL also erroneously relies on guidance from the United States Department of Labor (USDOL) to suggest the ALJ’s ruling was supported by federal law. Appellee’s Brief at 8. Specifically, DOL argues that Disaster Unemployment Assistance (DUA) regulations found at 20 C.F.R. Part 625 support the ALJ’s ruling. *Id.* Bracken vigorously disagrees.

Any notion that the ALJ’s rationale for using the term “indirect economic consequences” somehow “tracks” with applicable guidance from the USDOL is incorrect. Notably, the ALJ did not cite guidance from the USDOL in his Decision. *See* Appellee’s Brief at 8. Moreover, while it is true that USDOL guidance can be referenced when interpreting the CARES Act, this is only in limited situations when the CARES Act is silent on how an issue is to be addressed. The Court of Appeals of Minnesota explained the limited use of DUA regulations when interpreting the CARES Act as follows:

The USDOL guidance further provides that, in the event of questions concerning coverage or administration of the federal benefits that are not answered in the CARES Act or corresponding UIPLs, states should consult the regulations governing Disaster Unemployment Assistance (DUA), 20 C.F.R. Part 625. U.I.P.L. 16-20 Change 1, at 2. DUA is a preexisting ongoing federal program that provides unemployment assistance to eligible persons impacted by a major disaster. 42 U.S.C. § 5177; 20 C.F.R. § 625.1(a). Congress provided that the regulations governing DUA apply to the PUA program “except as otherwise provided

in [section 2102 of the CARES Act] or to the extent there is a conflict between [section 2102] and [part] 625.” CARES Act § 2102(h). Finally, only after applying provisions of the CARES Act, the UIPLs and the DUA regulations (to the extent not inconsistent with the Act of the UIPLs) are states to look at their own unemployment laws in interpreting eligibility for PUA benefits. U.I.P.L. 16-20 Change 1, at 2.

In the Matter of Hayat Muse, 956 N.W.2d 1, 4 (Minn. Ct. App. 2021).

Here, there is no reason to examine the DUA because the CARES Act provides in clear language PUA benefits should be awarded to “self-employed individuals who experience a significant diminution in their customary or usual services because of the COVID-19 Public Health Emergency...” U.I.P.L. No. 16-20, Change 4, U.I.P.L. No. 16-20, Change 5 (emphasis added); 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk). This standard is crystal clear. Further, Bracken fits squarely within this standard as she is a self-employed individual who experienced a significant diminution in her business because of the pandemic. There is simply no reason to look for further guidance from the DUA as Appellee contends. *See Sean Covell v. South Dakota Reemployment Assistance Division*, 32CIV22-000106, Hughes County, Sixth Judicial Circuit, Trial Court Decision dated December 29, 2022, by the Honorable Judge Klinger (rejecting the exact argument made by DOL in this case and finding that it was not necessary to consider further legal authority beyond the CARES Act when deciding an individual was entitled to PUA Benefits).

The “direct result” provision of the DUA conflicts with CARES Act section kk 1, which allows self-employed individuals experiencing a significant diminution of business to receive benefits. The DUA regulations found in 20 C.F.R. § 625, *et. seq.*, relate to the administration of certain non-CARES Act benefits. DUA § 625.5 addresses unemployment suffered by an employee or self-employed individual. Sections (a)(1) and

(b)(1) authorize coverage for workers or self-employed individuals whose “unemployment is a direct result of the major disaster.” 20 C.F.R. § 625.5(a)(1) (workers), 20 C.F.R. § 625.5(b)(1)(self-employed individuals). Subsection (c) then defines when unemployment is a “direct result of the major disaster.” 20 C.F.R. § 625.5(c). As set forth above, however, the term “direct result” is not used in CARES Act (kk)(1). Therefore, Bracken respectfully submits the definition found in § 625.5(c) is not triggered due to the express conflict between (kk)(1) and § 625.5(a)(1) or (b)(1).

iii. The Utah authority relied on by DOL is not persuasive.

DOL also relies upon a case from a Utah appellate court in support of its argument that (kk)(1) eligibility includes a “direct result” requirement. Appellee’s Brief at 8-9 (citing *Martin v. Dep’t of Workforce Services*, 507 P.3d 847 (Utah Ct. App. 2022)). Appellee correctly cites and quotes *Martin* in its brief. Bracken respectfully submits, however, that *Martin* is not persuasive authority.

First, *Martin* misinterprets the U.I.P.L. it cites in support of this proposition. Specifically, *Martin* states, “[T]he DOL has indicated that, under subsection (kk), a claimant’s reduction of work must be the ‘direct result of the COVID-19 public health emergency.’” *Id.* at 851 (citing U.I.P.L. 16-20 at I-6 (April 5, 2020)). That is *not* precisely what U.I.P.L. 16-20 states. Although the cited page of the U.I.P.L. referenced in *Martin* uses the term “direct result,” the full context of the quote is as follows:

The Secretary has determined that ... an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities. For example, a driver for a ridesharing service ... may still qualify for PUA

benefits if he or she has been forced to suspend operations as a **direct result** of the COVID-19 public health emergency . . .

U.I.P.L. 16-20 at I-6 (Apr. 5, 2020) (emphasis added).

Martin latched on to the use of the phrase “direct result” without bothering to assess its context. The paragraph in question establishes a barometer of eligibility (severely limited ability to perform work activities “because” of COVID-19) and then, as an example, offers an illustration involving a rideshare driver who has to suspend operations. Because *Martin* was overbroad in its interpretation of U.I.P.L. 16-20, its analysis and holding are fatally flawed.

Further, the facts in *Martin* are significantly different than this case. In *Martin*, the claimant at issue received an “at fault” over payment due to living outside of the United States when applying for and receiving benefits. *Martin*, 507 P.3d at 848. Here, it is undisputed Bracken was not at fault in receiving her PUA payment. See Appellant’s App. at 5 (stating in Notice of Determination and Overpayment (“[y]ou were not at fault.”). Bracken honestly and transparently advised DOL of her self-employment and financial situation when applying for and receiving important PUA benefits, the receipt of which allowed her to make it through the pandemic. These facts are much different than *Martin*, where the “at fault” claimant lived in Colombia when applying for benefits.

Should this Court find the U.I.P.L. 16-20 relied on in *Martin* to be applicable and relevant, however, it does not change the outcome. A review of additional U.I.P.L.s demonstrates the “direct result” definition and standard is not mandatory.

On April 27, 2020 (a few weeks after issuing U.I.P.L. 16-20), the USDOL’s Employment and Training Administration (ETA) published Change 1. In Attachment I to Change 1, the following Q&A is included:

Question: U.I.P.L. NO. 16-20 provides an example of a driver for a ridesharing service who is forced to significantly limit his or her performance of customary work activities because of the COVID-19 public health emergency, such as if a state or municipal order restricting movement makes continued operations unsustainable, indicating that he or she may be eligible under section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. Does this apply to other types of independent contractors?

Answer: Yes. An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act. This includes an independent contractor who experiences a significant diminution of work as a result of COVID-19.

U.I.P.L. 16-20, Change 1, Attachment I, Question 42, pg. I-11 (Apr. 27, 2020) (emphasis added).

A few months later, on July 21, 2020, further guidance was issued in Change 2:

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 U.I.P.L. 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 Attachment I to U.I.P.L. 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 U.I.P.L. 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.

U.I.P.L. 16-20, Change 2, pg. 2 (July 21, 2020) (emphasis added).

In the foregoing excerpts addressing eligibility under (kk)(1), only *once* is the phrase “direct result” used, and that was in the first publication on April 5, with the

phrased being used in an *example*. This not only establishes that the ETA knew how to use the phrase “direct result,” but also that it chose *not* to use that phrase in all subsequent guidance related to eligibility under (kk)(1). *Compare* U.I.P.L. 16-20, Change 5, pg. 6 (Feb. 25, 2021) (adding (kk)(2), educational provision, and clarifying it is only applicable if the impact is “directly related to COVID-19”) *with* U.I.P.L. 16-20, Change 6, pg. I-3 – I-4 (Sept. 3, 2021) (confirming that (kk)(1) applies to individuals “who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services.”).

Finally, on at least two occasions, the U.I.P.L.s directed States how to phrase (kk)(1) eligibility. First, on February 25, 2021, Change 5 instructed states that “[p]araphrasing of the COVID-19 related reasons [under (kk)] is not permissible,” but noted that “States may shorten the original COVID-19 related reason approved by the Secretary to read, ‘The individual is self-employed and experienced a significant reduction of services because of COVID-19.’” U.I.P.L. 16-20, Change 5, pg. 9 (Feb. 25, 2021). Then, on September 3, 2021, U.I.P.L. No. 16-20, Change 6 instructed that “States may use the following verbiage for item (kk.1): ‘I am self-employed (including an independent contractor or gig worker) and experienced a significant reduction of services because of the COVID-19 public health emergency.’” U.I.P.L. No. 16-20, Change 6 at I-4 (Sept. 3, 2021). At no time do any of the U.I.P.L.s impose the “direct result” standard on the (kk)(1) eligibility criteria, and DOL’s arguments to the contrary must be rejected.

CONCLUSION

Darcy Bracken is a self-employed person who suffered a significant diminution in her business due to the pandemic. She rightfully applied for a received PUA benefits

available to her under the CARES Act. Regardless, the ALJ erroneously injected the term “indirect economic consequences” into his decision denying Bracken benefits. This term is not contained within the applicable law and for this reason, the ALJ erred in ordering her to repay benefits she rightfully received.

For the reasons presented above, Bracken respectfully requests this Court reverse the rulings of the ALJ, Secretary, and Circuit Court and find that she rightfully applied for and received PUA benefits. In the alternative, Bracken respectfully requests this matter be reversed and remanded for a new evidentiary hearing with instructions to the ALJ and DOL to not make the determination based on an erroneous concept of “indirect economic consequences” but on whether Bracken suffered a significant diminution in her business during the pandemic.

Dated at Sioux Falls, South Dakota, this 24 day of January, 2023.

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The undersigned hereby certifies that this Reply Brief of Appellant complies with the type volume limitations set forth in SDCL 15-26A-66. Based on the information provided by Microsoft Word 365, this Brief contains 2,876 words and 18,436 characters, excluding the table of contents, table of authorities, preliminary statement, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel. This Brief is typeset in Times New Roman (12 point) and was prepared using Microsoft Word 365.

Dated at Sioux Falls, South Dakota, this 24 day of January, 2023.

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