

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

In the Matter of)
)
CLARENCE MORGAN) OAH No. 21-0118-PUA
) Agency No. P20 253

APPEAL DECISION

Docket Number: P20 253

Hearing Date: March 12/17, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Scott Davidson, ALSC, counsel
Clarence Morgan

None

CASE HISTORY

The claimant, Clarence Morgan, timely appealed an October 2, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on January 29, 2021. Under the agreed terms of referral, an administrative law judge (ALJ) hears and decides the appeal under procedures specific to PUA appeals. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on March 12 and 17, 2021. Scott Davidson of Alaska Legal Services represented Mr. Morgan. Mr. Morgan testified under oath, and testimony by affidavit was received from his work partner, Kenny Kameroff. At its own election, the Division of Employment and Training Services (DETS) provided only written materials for the hearing, and was not a live participant.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act.

FINDINGS OF FACT

Clarence Morgan established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 7, 2020. The Division determined that the claimant was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program.

Clarence Morgan was born and raised in the Y-K Delta and has worked for several decades, going back and forth between regular employee positions and independent contracting that he refers to, a little too modestly, as "odd jobs." He is experienced in

automobile and small engine repair, construction, and building maintenance. Prior to the pandemic, Mr. Morgan had not had a regular employee position since 2017, when he had been laid off from a full-time supervisory carpenter position. He wanted to get another such position, and at the time COVID-19 arrived he had several applications pending for positions for which he may have been competitive. These had not matured into job offers, however.

The work Mr. Morgan was doing in the winter before the pandemic was informal day labor, mostly in partnership with Kenny Kameroff. This was mostly mechanical work. The partners had jobs two or three days per week and Mr. Morgan was able to make \$300-\$400 per week.

The mechanical jobs dried up with the arrival of the pandemic. People simply did not want workers around. Mr. Morgan became financially stressed and had to sell some of his tools. He also could not afford to fix his car. These two circumstances made it more difficult for him to get back into the “odd jobs” work he had been doing even when the initial phases of the pandemic had passed, and he has had only minimal work in recent months. An infusion of cash would allow him to rebuild his tool set and get his vehicle running again, and might enable him to regain the same level of income he had prior to COVID-19.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance

- (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—

* * *

(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;

* * *

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; . . .

UIPL 16-20, Change 2 Issued by USDOL July 21, 2020

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

APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is not eligible for unemployment benefits under any State or Federal program and who is unemployed because one of a list of reasons related to the COVID-19 pandemic. The claimant in this case has not recently worked in covered employment that would qualify him for a claim for regular unemployment benefits.

Guidance from the US Department of Labor in UIPL 16-20 Change 2, above, holds that independent contractor who experiences a significant reduction in work as a direct result of the pandemic may be considered a covered individual. Mr. Morgan had been doing regular day labor, with significant income. That source of income dried up as a result of COVID-19. This loss of casual employment as an independent contractor is within the scope of COVID-19 impacts that Change 2 was intended to address.

In processing this claim, DETS focused on the pending applications for formal employment, and correctly concluded that these employment prospects were not secure enough for to support a PUA claim. This probably occurred because Mr.

Morgan refers to his independent contracting as “odd jobs” and seems to have assumed this kind of work would not count. However, the loss of independent day labor is an adequate basis to support this claim, even without proof of an offer of formal employment.

The Tribunal finds the claimant meets the definition of a covered individual beginning the week ending March 7, 2020.

DECISION

The determination issued on October 2, 2020 is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending March 7, 2020.

Dated: March 17, 2021

[REDACTED]
Christopher Kennedy
Administrative Law Judge

APPEAL RIGHTS

This decision is final unless an appeal is filed in writing to the Commissioner of Labor and Workforce Development **within 30 days** after the decision is mailed to each party. The appeal period may be extended only if the appeal is delayed for circumstances beyond the party's control. A statement of rights and procedures is enclosed.

CERTIFICATE OF SERVICE

I certify that on March 18, 2021 the foregoing decision was served on Scott Davidson, counsel for Mr. Morgan (by email). A copy was emailed to the UI Appeals Office for recordkeeping.

[REDACTED]—
Office of Administrative Hearings