

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

In the Matter of)
CLIFTON GAINES) OAH No. 21-0236-PUA
) Agency No. P20 306

APPEAL DECISION

Docket Number: P20 306

Hearing Date: March 23, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Clifton Gaines

None

CASE HISTORY

The claimant, Clifton Gaines, timely appealed an October 13, 2020 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Division of Employment & Training Services found that the claimant was not eligible for the PUA program starting the week ending February 8, 2020, because he was not impacted by COVID-19 in a manner that made him a “covered individual” as defined by section 2102 of the Act.

The Department of Labor referred the appeal to the Office of Administrative Hearings on January 29, 2021. Under the terms of referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. AS 44.64.060 procedures do not apply.

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

FINDINGS OF FACT

Mr. Gaines established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 8, 2020. He was not eligible for regular or other unemployment benefits, because he did not have wages in covered employment on which to base a claim.

The claimant applied to work for JC Penney just prior to the onset of the Covid-19 pandemic. He had previously worked for the company during the 2019 holiday season, and he applied to return to work for them again during a job fair held at the downtown Anchorage store on or about March 2, 2020. He testified under oath that JC Penney was putting on the job fair because they were short staffed. When he started to fill out his application, the JC Penney supervisor in charge of the job fair told him to “put in your application right now, when I get time later today or tomorrow I’ll pull your application and call you in for rehire.” She also indicated that persons

hired from the job fair would be expected to start work in the last week of March 2020. The claimant interpreted the supervisor's comments as a promise to hire him in the immediate future. The next thing he heard from JC Penney was a voicemail message in late March 2020, stating that the store would be closing indefinitely due to the COVID-19 pandemic so there would be no hiring at that time.

The claimant credibly testified at the hearing, under oath, that he had a job offer from JC Penney that would have resulted in him being employed n later than the week ending March 28, 2020. Instead, the pandemic caused the employer's store to close indefinitely, the claimant was never able to start work, and he has remained unemployed from that time until the date of the hearing, March 23, 2021.

RELEVANT STATUTORY PROVISIONS

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—
 - (aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - (bb) a member of the individual's household has been diagnosed with COVID-19;
 - (cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
 - (dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

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

(ll) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (I);

(B) does not include—

(i) an individual who has the ability to telework with pay; or

(ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

Unemployment Insurance Program Letter (UIPL) 16-20, Change 2, Issued July 21, 2020, by the U.S. Department of Labor:

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 (PUA) 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 of one or more reasons related to the COVID-19 pandemic. It is undisputed that the claimant’s work history did not qualify him for a claim for regular or other unemployment benefits in 2020.

The Division’s denial letter to the claimant explains the basis for denial of PUA eligibility as follows:

It has been determined that you have not been impacted by COVID-19 reasons ... and are therefore not a covered individual. ... You were impacted by COVID-19 on 3/18/20 when your employer closed however, your employer could not verify you were given another offer of employment after your seasonal employment ended in 2019. (Exhibit 1, p. 2.)

The Division’s conclusion that JC Penney “could not verify ... another offer of employment” was apparently based on an interview conducted with the store manager. (See Exhibit 1, p. 13.) The claimant, however, credibly testified that he never spoke with the store manager when he applied at the job fair, that he only interacted with the job fair supervisor regarding his application that day, and that the supervisor was clear in her comments to him about starting back to work at the end of March 2020. The claimant’s testimony makes it clear that the Division’s denial of PUA eligibility was based on incorrect information provided by a manager without direct knowledge of the claimant’s application and hiring.

Based on these facts, absent the onset of the COVID-19 pandemic the claimant would have started back to work at JC Penney within a few weeks of submitting his application for rehire. Given these circumstances, the claimant here falls under either the eligibility category “the individual was scheduled to commence employment and does not have a job ... as a direct result of the COVID-19 public health emergency,” or the eligibility category “the individual’s place of employment is closed as a direct result of the COVID-19 public health emergency.”

The claimant was eligible for PUA benefits as of the week ending March 28, 2020.

DECISION

The determination issued on October 13, 2020 is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance program, effective the week ending March 28, 2020.

Dated: March 30, 2021

[REDACTED]
Andrew M. Lebo
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 30, 2021 the foregoing decision was served on Clifton Gaines (by email & U.S. mail); a courtesy copy was emailed to the UI Appeals Office, Dep't. of Labor for recordkeeping.

[REDACTED] _____
Office of Administrative Hearings