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**APPEAL TRIBUNAL DECISION**

**Docket Number:** P20 215 **Hearing Date:** November 24, 2020

 January 4, 2021

**CLAIMANT:**

CHRISTOPHER ADKINS

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Christopher Adkins Richard Doogan

#### CASE HISTORY

The claimant timely appealed a July 8, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The issue before the Appeal Tribunal is whether the claimant meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

The claimant established a claim for Pandemic Unemployment Assistance benefits effective March 15, 2020. The Division determined that the claimant was not eligible for regular unemployment benefits because he did not have wages in covered employment on which to base a claim.

The claimant has been self-employed as a handyman and mechanic for the past 3-4 years. His handyman work consists of snow removal in the winter, and yard cleaning and trash removal in the spring. The claimant performed some work for an apartment owner in May 2020. The owner told the claimant he had more work coming up, but then did not call the claimant. The claimant does not know why no further work was offered, but speculated it was related to the COVID-19 pandemic. The claimant had planned to start a job immediately after that work which consisted of sealing a residential driveway for a customer, but the customer delayed and then cancelled the work because of concerns about the COVID-19 pandemic. The customer eventually told the claimant he would have the work done next year when it was safe.

The claimant is a certified mechanic for motorcycles and 4-wheelers and he also works on cars. The claimant gets his handyman and mechanic business by hanging flyers on doors in residential areas and by posting ads online. He was prevented from hanging flyers on doors when local mandates ordered residents to “hunker down” and avoid non-essential travel. No mandates prevented the claimant from performing handyman work or working on vehicles, neither of which require substantial contact with customers. The Tribunal takes official notice of the Municipality of Anchorage’s COVID-19 website at https://covid-response-moa-muniorg.hub.arcgis.com/pages/

emergency-orders, which states that the area’s “hunker down” order ended effective April 27, 2020. The claimant was not aware of the end date of the order. He did pass out some flyers in residential areas over the summer, but felt like he was “doing something wrong” when he did.

The claimant provided a record of his earnings in 2019 and for January through July of 2020. In comparing the claimant’s earnings, His 2020 earnings for February 2020 were 58 percent of 2019 earnings, March 57 percent, April 78 percent, May 86 percent, June 40 percent, and July 10 percent. The claimant’s only work in June and July was work he did for a family member. A large portion of the claimant’s 2019 summer income was doing yard work for an apartment complex. He did not return to that work in 2020 because the building changed owners and the new owner did the work himself.

**STATUTORY PROVISIONS**

**AS 23.20.080 Federal-state cooperation**

(a) In the administration of this chapter, the department shall cooperate, to the extent consistent with this chapter, with the Secretary of Labor, and shall take action through the adoption of regulations, administration methods, and standards that is necessary to obtain for this state and its citizens all advantages available under 26 U.S.C. 3303 and 3304 (Internal Revenue Code) and the Wagner-Peyser Act, as amended. The department shall comply with the regulations of the Secretary of Labor relating to the receipt or expenditure by this state of money granted under these federal laws and shall make reports in the form and containing the information which the Secretary of Labor requires. The department shall comply with the provisions which the Secretary of Labor may from time to time find necessary to assure the correctness and verification of the reports. The department may cooperate with every agency of the United States charged with the administration of an unemployment insurance 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—

(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

(II) 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); and

(B) does not include—

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

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

**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.

 **CONCLUSION**

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 of 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.

The claimant held that he experienced a significant diminution of services in his self-employment because of the COVID-19 pandemic because jobs were cancelled and he was not allowed to distribute advertising flyers to seek work in residential areas.

Guidance from the US Department of Labor in UIPL 1620 Change 2, above, holds that a self-employed claimant who experiences a significant diminution in services as a direct result of the pandemic may be considered a covered individual. The claimant established that his ability to perform his work was significantly impacted by the pandemic in February and March 2020, however his income from self-employment was not significantly diminished in April and May 2020 when he earned 78 and 86 percent of his previous year’s income, respectively.

The claimant’s services were significantly diminished in June and July of 2020 when he earned seven and ten percent of his previous year’s income, respectively, however, the claimant did not establish that the pandemic was the reason for his drop in services during those months. He was not prevented by mandates from handing out flyers to find work during those months. Part of his decrease during those months was the lack of yard work he had previously performed, but this loss of work was not established to be COVID-19 related.

The Tribunal finds the claimant meets the definition of a “covered individual” effective the beginning date of that program, February 2, 2020, and continuing through the end of March, 2020.

**DECISION**

The determination issued on July 8, 2020 is **MODIFIED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program the weeks ending February 8, 2020 through March 28, 2020.

The matter is **REMANDED** to the Division to change the effective date of the claimant’s PUA claim to February 2, 2020. The Division is to contact the claimant and assist him to file certifications for any weeks during his eligibility period for which he has not previously filed certifications.

####  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.

Dated and mailed on January 5, 2021.

 Rhonda Buness, Appeals Officer