

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

In the Matter of )  
 )  
MICHAEL HAINES ) OAH No. 21-0138-PUA  
 ) Agency No. P20 267  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P20 267

**Hearing Date:** February 16, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Michael Haines

None

**CASE HISTORY**

The claimant, Eric Winters, timely appealed a September 11, 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 or about 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 February 17, 2021. Mr. Haines testified under oath. 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**

Mr. Haines established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 4, 2020. The Division determined that the claimant was not eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program.

For 34 years until the end of 2018, Mr. Haines was successfully self-employed as a flooring contractor. On some jobs his main role was to lay flooring himself; on others, he functioned as a project manager overseeing the flooring work of others. In 2018, for example, he filled the project manager role for a three-month job flooring the Fairbanks Courthouse. Other recent jobs in which he filled this role included the re-

carpeting of the Alaska Railroad's vistadome cars and large projects in the Snowden and Boney Courthouses in Anchorage. This was an established business netting Mr. Haines up to \$50,000 a year, after expenses.

The crews that would lay the floor would not be Mr. Haines's employees and would not fall under his own workers' compensation policy. In many cases, he did not technically need any insurance or even a business license to do the work, although he generally would have the latter and, if the former was called for by project requirements, he would routinely pick up a policy for the particular project.

In the first part of 2019, Mr. Haines voluntarily took some time off, living on savings. In September and November of 2019, he had first one knee and then the other replaced. Physical therapy for these operations was to end in March of 2020, although due the pandemic it terminated in February instead.

Mr. Haines's intent was to resume his flooring business at the end of scheduled physical therapy. Because of the knee replacements, he did not plan to do direct flooring installation himself, but instead to do the project management side of the work, as he frequently had before 2019. Mr. Haines's business license had expired, but he could get it renewed online more or less instantaneously if a general contractor made a job available to him, and this kind of project-specific credentialing was standard in the business.

It was at this point that the pandemic reduced indoor flooring work to a trickle, and the market for project-managing floor installation dried up. Mr. Haines did not get any flooring work between April and July. He looked into other kinds of work, but was not successful.

In August of 2020 (the exact date in August is uncertain), Mr. Haines suffered a fall unrelated to work and dislocated a knee. This has segued into other health problems, and it does not appear that Mr. Haines would have been available for work between August and the date of hearing.

#### **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—

\* \* \*

(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; . . .

### **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. It appears to be undisputed that the claimant’s work history did not represent 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. The loss of Mr. Haines's established, proven access to the profitable flooring project management contracts is within the scope of COVID-19 impacts PUA was intended to address. The wrinkle in Mr. Haines's case is the work hiatus in 2019 for a kind of sabbatical followed by a pair of pre-planned knee replacements. Nonetheless, it is more probable than not that Mr. Haines could have and would have resumed his long history of project management opportunities had COVID-19 not occurred just as the knee rehabilitation was wrapping up.

In processing this claim, DETS focused on Mr. Haines's efforts to gain substitute employment in new types of work, rather than the established flooring business. This is because Mr. Haines does not seem to have focused on the right aspects of his history in presenting his claim. The hearing was able to clear up the nature of the more concrete lost opportunities for Mr. Haines, and establish the direct connection between his loss of work and COVID-19.

The Tribunal finds the claimant meets the definition of a covered individual beginning the week ending April 4, 2020. However, he ceased to meet that definition when new health problems sidelined him in August.

### **DECISION**

The determination issued on September 11, 2020 is **REVERSED** for the period from the week ending April 4, 2020 through the week ending August 1, 2020. It is **AFFIRMED** for the period thereafter. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program from the week ending April 4, 2020 to the week ending August 1, 2020, inclusive.

Dated: March 8, 2021

  
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 8, 2021 the foregoing decision was served on Michael Haines (by mail and by email to [REDACTED]). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

[REDACTED] \_\_\_\_\_  
Office of Administrative Hearings