

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

In the Matter of)
)
SHEILA GARRANT) OAH No. 21-0301-PUA
) Agency No. P20 355

APPEAL DECISION

Docket Number: P20 355

Hearing Date: March 25, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Sheila Garrant

None

CASE HISTORY

The claimant in this case, Sheila Garrant, timely appealed an October 13, 2020 determination¹ 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 in February 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 25, 2021, with the record held open for another week to allow submission of additional work timesheets. Ms. Garrant 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

Ms. Garrant, a gig worker, established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 21, 2020. The Division ultimately found that she was not impacted by COVID-19 in a manner that made her a covered individual under the program, believing that she had not demonstrated business income during the year prior to the pandemic.

¹ The notice letter for the decision was dated October 14, 2020.

In fact, it is extremely well documented that Ms. Garrant had worked for upwards of ten years as a professional court reporter and transcriptionist for Peninsula Reporting, a Kenai Peninsula court reporting firm. She worked as an independent contractor. In 2017, 2018, and 2019, she had earnings of between \$20,000 and \$25,000 each year from this work. The work actually accelerated during the first ten weeks of 2020, during which she had 39 gigs and earned just under \$10,000.

The majority of Ms. Garrant’s recording and transcription work involved depositions, which typically take place in an intimate setting. Demand for this kind of work completely evaporated over the course of March 2020, and remained depressed for many months. Ms. Garrant also attended and prepared minutes for official meetings; this work also dropped to nothing for a time, although it would later come back to a limited degree, rebounding more quickly than the deposition work.

Ms. Garrant’s last pre-COVID event was on March 6, 2020, with the transcribing from the early March events largely completed during the following week and tapering off during the third week of March, reaching zero in the fourth week. Ms. Garrant’s work volume in the following months was as follows:

| Month | Depositions | Meetings | Monthly earnings (accrued) |
|--------------|--------------------|-----------------|-----------------------------------|
| April | 0 | 4 | \$845 |
| May | 2 | 7 | \$2140 |
| June | 0 | 0 | 0 |
| July | 0 | 0 | 0 |
| August | 0 | 2 | \$228 |
| September | 0 | 4 | \$363 |
| October | 0 | 4 | \$1338 |

As can be seen, the overall work volume dropped about 75% from what it had been just prior to COVID-19, but there was one short period in late spring when it approached Ms. Garrant’s long-term average for a few weeks.

There is strong evidence that COVID-19 was responsible for this overall downturn in court reporting work. Ms. Garrant can only work when assigned to events by Peninsula Reporting, but with COVID-19 causing civil litigation to be largely shut down during the spring, summer, and fall, there were simply many fewer events to be assigned.

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—

* * *

(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.

* * *

11. Question: Is a freelance writer who works from home, but is no longer getting paid for any work, eligible for PUA?

Answer: It depends. Section 2102(a)(3)(B) of the CARES Act provides that an individual who has the ability to telework with pay is not covered under PUA. However, if the freelance writer has experienced a significant diminution of freelance work because of COVID-19, regardless of his or her ability to telework, 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, though his or her benefit amount may be reduced because of income from continued partial employment.

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’s history of independent contractor employment did not represent employment that would qualify her for a claim for regular or emergency unemployment benefits in 2020.

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. Ms. Garrant, whose profession is highly dependent on events that were greatly curtailed by the pandemic, is a classic example of such a worker. Although much of her transcribing work is done at home, she cannot do the work if there is nothing to transcribe. In this respect, she is similar to the example, quoted above, of a freelance writer who, though still able to work, may still suffer a sufficient loss of demand for services due to the pandemic to be a covered individual.

DETS seems to have accepted this, but apparently felt that Ms. Garrant had failed to demonstrate a sufficient earnings history in her profession, seemingly suspecting that she had not worked at all in 2019. To the extent that there was any doubt about this, it has been amply dispelled; the tax documents and time sheets submitted conclusively establish a reliable, regular, continuous, and recent connection to the workforce, continuing right up to the pandemic.

After COVID-19 struck, Ms. Garrant did continue to try to work, and was successful to a limited degree. She reported her income to DETS, and in some weeks it may be enough to reduce her PUA benefit to zero. DETS will need to evaluate this week by week, bearing in mind that there is a lag between doing the work (accrual) and being paid by Peninsula Reporting.

The Tribunal finds the claimant meets the definition of a covered individual beginning the week ending March 21, 2020 and continuing into October 2020. Eligibility after the date of the October 13, 2020 determination has not been evaluated.

DECISION

The determination in Letter ID L00055498409 is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending March 21, 2020 and ongoing to the date of the decision under review. The Division may adjust benefits for weeks in which income was earned.

Dated: April 5, 2021

Signed _____
For: 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 April 5, 2021 the foregoing decision was served on Sheila Garrant (by mail and by email to akgarrant@hotmail.com). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

Signed _____
Office of Administrative Hearings