

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

In the Matter of)
)
RON GARCIA) OAH No. 21-0341-PUA
) Agency No. P20 367
_____)

APPEAL DECISION

Docket Number: P20 367 PUA

Hearing Date: April 2, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Ron Garcia

None

CASE HISTORY

The claimant, Ron Garcia, timely appealed an October 7, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136.

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

The issue before the ALJ is whether the claimant is a “covered individual” as defined by the Act and therefore eligible for PUA benefits.

EXHIBITS

Exhibit 1 submitted by the Department is ADMITTED.

Exhibit 2, submitted by the claimant is ADMITTED. Exhibit 2 consists of 11 pages. Page 1 is the email Mr. Garcia submitted dated March 31, 2021. Pages 2 through 6 are from his 2019 tax return. Page 7 is Mr. Garcia’s business license. Pages 8 through 10 is a letter from the US Census Bureau. Page 11 is a 2019 1099 from Sales Associates of Alaska.

FINDINGS OF FACT

The claimant established a claim for PUA benefits effective the week ending April 4, 2020. He had been a concrete finisher for many years, and since 2017, he worked as a self-employed independent contractor working on any type of project people needed him for. He would cut grass, shovel snow, do plumbing and other light construction

work, and also performed concrete finish work when needed. In 2017 and 2018, he was also mining gold and did not do a lot of his independent contractor work. In 2019, however, his business started to improve. He earned \$5,028 (after expenses and deductions) from this type of work. Exhibit 2, Schedule C. He obtained some work in early 2020, but when the stay-home mandate was imposed, he stopped getting any job offers.

One job he had in 2019 was for Sales Associates. They were building a hanger, and Mr. Garcia did the concrete work for that project. According to Mr. Garcia, he would have had additional work for the hanger project, but it was shut done because they could not get additional financing because of COVID 19.

Mr. Garcia was able to get \$5,000 worth of employment in 2019, and only \$1200 of that was from Sales Associates. Thus, he has shown the ability to generate business prior to the COVID-19 pandemic. He did not obtain any work in 2020, which he attributes to the pandemic. Unfortunately, the only job he can point to is the Sales Associates work. That he didn't get that work because of the pandemic is based on two key assertions. First, Mr. Garcia asserts that the work stopped because of a COVID related financing issue. That is certainly possible, but the evidence in support of that is not strong. It is based on what Mr. Garcia was told, and there is no independent confirmation from either the lender or the borrower. Second, Mr. Garcia's work on that project had ended. He had a good expectation of being picked up for additional work, but no firm commitment that he would have been re-hired.

When he was unable to obtain work as a self-employed contractor, Mr. Garcia also applied to the US Census Bureau. He received a firm offer of employment to work as a census enumerator. In order to begin work, all he had to do was get his fingerprints taken and pass the background check. There is no reason in the record to suspect that Mr. Garcia would not have passed the background check. He tried three times to get his fingerprints taken, but the location where fingerprints were being processed was not able to do so because they were not able to set up appropriate COVID-19 protocols to ensure the safety of the people being fingerprinted.

The Census Bureau letter does say that Mr. Garcia's training would depend on the "availability of work." However, it is more likely that this phrase simply means the exact work he would be trained for was unknown, but that the Census Bureau did have some work for him to perform. Otherwise, the letter would more likely have clearly stated that she would be put on a list of eligible employees who would be called on if there was a need. According to the Bureau's website, this work was scheduled to last from May 13, through July31, 2020.¹

¹ <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html> (accessed April 3, 2021)

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. (Italics added)

APPLICATION

Mr. Garcia suffered a significant diminution of work during 2020, but he has not shown by a preponderance of the evidence that this was because of COVID-19. However, Mr. Garcia was scheduled to commence employment with the Census Bureau and could not do so because COVID-19 precluded him from getting fingerprinted which was the first step for getting a background check. Mr. Garcia is a covered individual under sub-section (gg) quoted above.

The Tribunal finds the claimant meets the definition of covered individual for the purposes of receiving benefits from the PUA program effective the week ending May 16, 2020, through the week ending August 1, 2020.

DECISION

The determination issued on October 7, 2020 is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending May 16, 2020, through the week ending August 1, 2020.

Dated: April 5, 2021

Signed

Jeffrey A. Friedman

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 Ron Garcia (by mail and by email). A copy was emailed to the UI Appeals Office for recordkeeping.

Signed

Office of Administrative Hearings