

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

In the Matter of)
)
GARRETT PERKINS) OAH No. 21-0426-PUA
) Agency No. P20 408
_____)

APPEAL DECISION

Docket Number: P20 408

Hearing Date: April 9, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Garrett Perkins

None

CASE HISTORY

The claimant, Garrett Perkins, timely appealed an October 14, 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.

FINDINGS OF FACT

The claimant established a claim for PUA benefits effective the week ending April 18, 2020. Mr. Perkins has two sources of income relevant to this appeal. First, every year he manages a booth each year at the Tanana Valley Fair in Fairbanks and the Alaska State Fair in Palmer. He has been doing that work for 13 years and works closely with the booth owner throughout the year to ensure success during the fairs. He earned between \$4500 and \$6000 managing the booth in 2019. In 2020, both fairs were cancelled because of COVID. Mr. Perkins’ evidence established that but for the cancellation due to COVID, Mr. Perkins would have managed the booth at both fairs in 2020. Both fairs would have been over by the week ending September 12, 2020.¹

A larger portion of Mr. Perkins income comes from his full-time, not seasonal, work creating bicycle racks, garden art, artistic fire pits, and other plasma cut metal work.

¹ The Alaska State Fair ends on Labor Day, which occurred on September 7, 2020.

He does this work as a self-employed individual, and earned about \$13,500 in 2019. He has engaged in his metal work job since December of 2012. Mr. Perkins submitted pictures of his artwork and artistic firepits, which are admitted into the record. He obtains commissions for his work through word of mouth. He also attends various events such as the Girdwood Forest Fair, the Trapper Creek Festival, and Anchorage Botanical Garden meetups. None of those events occurred in 2020. In addition, people were not buying his work through his word of mouth efforts. People were not supposed to gather around fire pits in their own back yards, and other people were unsure of their own income. Mr. Perkins testified to his significant reduction in income as a result of the COVID pandemic. He only earned about \$700 in 2020 for two small fence repair jobs. Mr. Perkins is only now getting some phone calls about possible commissions, though he has not actually earned money from that work as of April 9, 2021, the date of his hearing.

The Notice of Non-Monetary Issue Determination only finds Mr. Perkins ineligible for benefits as of the week ending September 19, 2020. Exhibit 1, page 2. Mr. Perkins testified that he was paid benefits for the one-month period he would have been working the Tanana Valley Fair and the Alaska State Fair. He apparently was not paid for benefits beginning the week ending April 18, 2020 except for the time he would have worked those fairs.

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.

APPLICATION

The issue in this appeal concerns Mr. Perkins’ eligibility for benefits as of the week ending April 18, 2020. The Department only found him ineligible as of the week ending September 19, 2020, and thus apparently agrees he was eligible prior to that date. He was actually paid benefits for a portion of the time prior to the week ending September 19, 2020. In any event, the Tribunal finds the claimant meets the definition of a covered individual based on both subsections (gg) and (kk) cited above, beginning the week ending April 18, 2020. UIPL 16-20, Change 2 clarified that self-employed independent contractors such as Mr. Perkins are entitled to benefits if they show through credible evidence that they experienced a significant diminution of work because of the COVID-19 pandemic. Mr. Perkins has made that showing.

DECISION

The determination issued on October 14, 2020, is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending April 18, 2020, less any amounts previously paid.

Dated: April 12, 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 12, 2021 the foregoing decision was served on Garrett Perkins (by mail and by email). A copy was emailed to the UI Appeals Office for recordkeeping.

Signed

Office of Administrative Hearings