

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

In the Matter of )  
 )  
HUSSAIN ALSOLTANI ) OAH No. 21-0298-PUA  
 ) Agency No. P20 427  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P20 427

**Hearing Date:** March 24, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Hussain Alsoltani

None

**CASE HISTORY**

The claimant, Hussain Alsoltani, timely appealed an October 23, 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 February 25, 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 24, 2021. Mr. Alsoltani testified under oath. He submitted his 2019 federal tax return, including Schedule C, and a 2020 tax summary from Uber. The Division of Employment and Training Services (DETS) provided written materials for the hearing but 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. Alsoltani established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 7, 2020. The Division determined that the claimant was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual.

The claimant is self-employed as an Uber driver. He has done this work as his primary source of income since August 20, 2017. The claimant's spouse serves in the U.S. Army. She was stationed in Hawaii until the summer of 2019, when the family moved to Alaska. In 2019, the claimant worked roughly half the year in Hawaii and half the year in Alaska.

While his spouse works, the claimant is the primary caregiver for the couple's twins, who were in 2<sup>nd</sup> grade during the 2019-2020 school year. Prior to the pandemic, the claimant worked nearly full-time at his job while the children's schools were in session. He worked at other times as his schedule allowed. During summers, due to his childcare responsibilities, he worked fewer hours and focused his driving on weekends. The claimant's 2019 Schedule C shows gross revenues from self-employment of \$38,312.

In 2020, the claimant drove for Uber in January and February. He stopped when his children's schools were closed for spring break and then due to the COVID-19 pandemic. He recalled the closure being March 6 or 7, 2020. The children attended a school in the Anchorage School District. Publicly available information shows students were released for spring break from March 6 through March 13, 2020. Schools were closed due to the pandemic after the break, starting Monday, March 16, 2020.

The claimant did not drive for Uber from March 6, 2020 until his children returned to in-person school on February 8, 2021.

Starting in March 2020, demand for Uber rides decreased significantly. The claimant lives in Eagle River, where there was little demand from March 2020 through the rest of the year. A 2020 Uber tax summary shows the claimant's gross revenues for the year were just under \$3,500, less than 10% of his 2019 revenue.

### **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—

(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).

**Unemployment Insurance Program Letter (UIPL) 16-20, Change 2 Issued by the U.S. Department of Labor on 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 of one or more listed reasons related to the COVID-19 pandemic.

The claimant has not worked in covered employment that would qualify him for a claim for regular unemployment benefits.

The claimant held that he was impacted by COVID-19 because his business revenue dropped dramatically in 2020 and because he could not work while his children were home doing online school.

Guidance from the U.S. Department of Labor in UIPL 16-20 Change 2, above, holds that independent contractors and gig workers who experience a significant reduction in work as a direct result of the pandemic may be considered covered individuals. That is the case here. Though the claimant was not ordered to stop working under a government mandate, business demand dropped significantly as a direct result of the pandemic. This was because many other businesses closed, travel slowed dramatically, and people stayed home as much as possible to avoid infection. The result was a significant loss of income to the claimant, which brings him within the scope of COVID-19 impacts that PUA was intended to address.

In addition, the claimant showed that he had primary caregiving responsibility for his 2<sup>nd</sup> grade twins and could not work while they were doing school online. In 2020 this impact ran from the week ending March 21, 2020 through the week ending May 23, 2020, and then again from the week ending August 22, 2020 through the week ending December 19, 2020. During these times, the claimant needed to be home supporting his children's online education. The claimant also qualifies as a covered individual on this basis for periods that schools were in session.

The denial determination concluded that there were no government mandates preventing transportation workers from doing their jobs. Though this statement is accurate, it focused only on whether the claimant was unable to access his place of employment because of shut-down orders. It overlooked other ways in which an independent contractor may qualify for PUA, such as through a significant diminution of services and through caregiving for young children unable to attend school. In the hearing process, the claimant showed there was a direct causal connection between the COVID-19 pandemic and his loss of work for both these reasons.

In 2020, the claimant had concerns about driving for Uber since he did not want to get sick or infect his family with COVID-19. He checked for available work infrequently during the summer. Regardless, he credibly testified that there was very little demand for Uber services in Eagle River during those months.

The claimant showed he meets the definition of a covered individual beginning the week ending March 21, 2020, when his children's schools were first closed as a direct result of the pandemic.

### **DECISION**

The determination issued on October 23, 2020 is **AFFIRMED IN PART**, as to the weeks ending March 7 and March 14, 2020. The determination is **REVERSED** effective the week ending March 21, 2020. The claimant is eligible for benefits from the Pandemic Unemployment Assistance program beginning that week.

Dated: March 29, 2021

  
For: Kathryn Swiderski  
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 30, 2021 the foregoing decision was served on Hussain Alsaltani (by mail and email). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

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Office of Administrative Hearings