

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

In the Matter of)
)
VINCENT STOVALL) OAH No. 21-0477-PUA
) Agency No. P20 442
_____)

CORRECTED APPEAL DECISION¹

Docket Number: P20 442

Hearing Date: April 16, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Vincent Stovall

None

CASE HISTORY

The claimant, Vincent Stovall, timely appealed a November 16, 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 May 16, 2020. Mr. Stovall has been a painter in Juneau and Anchorage, Alaska for over 25 years. He also does handyman work, or any other small job people want to hire him for. In the summers most of his work is exterior painting. In the winter months, he moved indoors to paint or perform smaller repairs and remodeling. He only accepts jobs that he can complete by himself as he does not want to increase the size of his business.

In typical years, Mr. Stovall would obtain business by going door to door and soliciting work. Much of this was based on in-person contact. Once he started working on one

¹ This decision corrects an error in the DECISION section to hold that Mr. Stovall is eligible for PUA benefits as of the week ending May 16, 2020. No other changes were made.

home, he would frequently obtain additional works from neighbors who also wanted to hire him.

Mr. Stovall was unable to obtain any work in 2020. In late 2019 and early 2020, he was out of town settling his father's estate. He returned to Juneau in February and then the COVID-19 pandemic made it difficult to find work. He was not able to solicit work in person because of the pandemic, and while he did drop off flyers at home, he did not receive any responses. He also did not get any work from his Facebook ads. In talking with his competitors, Mr. Stovall learned that they also did not have work. Mr. Stovall did have one job lined up in advance; he was going to remodel a bed and breakfast. That job was canceled because people could not travel due to COVID. Mr. Stovall submitted tax documents for 2020 which show that he only earned social security benefits and \$992 in other income; presumably his Permanent Fund Dividend.

The difficulty in this case is that Mr. Stovall only had one job in 2020. He was hired to clean a roof and gutters, and paint a home. He earned \$4,000 for that work and was reimbursed for \$5258.55 in materials. Exhibit 1, page 18. This could show that Mr. Stovall did not have a significant connection to the work force prior to COVID, and that he therefore did not have a significant reduction in income because of COVID. However, Mr. Stovall explained why he did not work more in 2019. Mr. Stovall had five close family members die within the last 18 months, including two children and both parents. He had to attend funerals out of town and help close out his father's estate. While these deaths were not directly related to COVID, they did limit his ability to solicit business and perform work. Mr. Stovall has been painting for over 25 years, and testified that he earned \$10 to \$20,000 in 2018.

This would have been a stronger case had Mr. Stovall submitted evidence of the 2020 Bed and Breakfast contract that was cancelled, as well as his 2018 and 2019 tax returns, but his testimony was credible, and he did go from \$4,000 of income in 2019 to no income from his self-employment in 2020. For someone who does not earn a large amount of money in any year, losing \$4,000 is a significant diminution of income.

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* (italics added).

APPLICATION

Mr. Stovall was an independent contractor working as a painter and handyman. He suffered a significant diminution of work because of the COVID-19 public health emergency.

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.

DECISION

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

Dated: April 20, 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 20, 2021 the foregoing decision was served on Vincent Stovall (by mail and by email). A copy was emailed to the UI Appeals Office for recordkeeping.

Signed

Office of Administrative Hearings