

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

In the Matter of)
)
ILETA TRESKOTT) OAH No. 21-0428-PUA
) Agency No. P20 458
_____)

APPEAL DECISION

Docket Number: P20 458

Hearing Date: April 9, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Ileta Trescott

None

CASE HISTORY

The claimant, Ileta Trescott, timely appealed a November 13, 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 March 21, 2020. Ms. Trescott has been a driver for both Uber and Lyft for several years. She earned over \$32,000 in gross income from this work in 2019. In stopped driving for these companies in April of 2020. In 2020, she only had about \$3,200 in gross receipts.

Ms. Trescott was still driving at the beginning of April, but stopped driving to the airport. Instead, she focused on rides to and from the university and local hospitals. After schools were closed, she stopped driving altogether. Ms. Trescott explained that there was no need for the service. People had lost their jobs and restaurants had closed. Ms. Trescott also testified that she was home helping her school-aged children, but further stated that they were old enough to be home by themselves if she was working. She was able to take time between rides to help them with their homework if they called and asked for help.

Ms. Trescott testified that she stopped driving because she did not want to catch COVID-19 or bring it home to her children. She was asked whether she attempted to get business as a driver but said she stopped to keep herself and her family safe.

However, Ms. Trescott did provide some testimony about her reduction in income. In all of 2019, she earned over \$32,000. In the first quarter of 2020, she only earned one-tenth of that amount. While her income may fluctuate seasonally, it is reasonable to assume that her first quarter income would be closer to 25% of her annual income. Combined with the known closures for restaurants and bars, and the publicly available information about the increased rates of telecommuting, she has provided sufficient information to prove by a preponderance of the evidence that she experienced a diminution of work because of COVID, and that this reduction was likely to have continued through the remainder of the year had she attempted to obtain work as a driver. I also note that the basis for the Department's ruling seems to be that Ms. Trescott was able to work as a driver during this period, without addressing whether she would have actually earned money if she had been looking for ride-share customers. Exhibit 1, page 10.

Ms. Trescott also mentioned that she has health conditions that might put her at risk if she does get infected, but did not receive medical advice to self-quarantine or stop working as a driver.

Ms. Trescott was also the primary caretaker for her children. However, she was able to continue working even while her children were at home, and stated that during her telephone appeal, her phone interview with the Department, and during the hearing.

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—

* * *

(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;

* * *

(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;

* * *

(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

UIPL 16-20, Change 2 clarifies that ride-share drivers such as Ms. Trescott are eligible for Pandemic Unemployment Benefits if they experienced a significant diminution of services because of the COVID-19 pandemic. Ms. Trescott did suffer a diminution of services because of the pandemic during the first quarter of the year which was likely to have continued throughout the year.

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 March 21, 2020, through the week ending November 7, 2020, after which Ms. Trescott stopped filing claims. This decision does not make any ruling starting with the week ending November 14, 2020, and subsequent weeks.

DECISION

The determination issued on November 13, 2020, is REVERSED. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending March 21, 2020, through the week ending November 7, 2020.

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 13, 2021 the foregoing decision was served on Ileta Trescott (by mail and by email). A copy was emailed to the UI Appeals Office for recordkeeping.

Signed

Office of Administrative Hearings