

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

In the Matter of )  
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KERRI EDWARDS ) OAH No. 21-0581-PUA  
 ) Agency No. P21-056  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21-056

**Hearing Date:** May 3, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Kerri Edwards

None

**CASE HISTORY**

The claimant, Kerri Edwards, timely appealed a November 10, 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 on or about April 1, 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 May 3, 2021. Mr. Edwards testified under oath. At its own election, the Division of Employment and Training Services (DETS) provided only written materials for the hearing and was not a live participant.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

Kerri Edwards established a claim for Pandemic Unemployment Assistance benefits effective February 8, 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 under the program.

Prior to COVID-19, the claimant was self-employed as a specialty construction contractor in Fairbanks, Alaska. He has done this type of work in Fairbanks since 1991. The claimant typically works from April through the end of November. (Exhibit 1, p. 13.) When the COVID-19 pandemic hit Fairbanks, it had an impact on his business. He had a potential concrete wall construction job lined up with the University of Alaska Fairbanks (UAF), but before his bid was awarded, the project was

shut down. Mr. Edwards did get sick at that time, although he never confirmed conclusively that it was COVID 19 or just a severe flu. The claimant was led to believe that the project was shut down due to his illness and exposure to other workers on the jobsite. When asked if he had ever received a diagnosis to confirm whether he had COVID at that time, the claimant responded that he believes the pandemic is “a big scam,” a “big hoax.”

The claimant’s main specialty is exterior work, plastering on foam insulation coatings. He generates work through word of mouth, advertising through Craig’s List, and distributing his business cards to the public and at jobsites. As he does not have a business license or liability insurance, he does not apply for government jobs. He stated that due to the pandemic, “everybody is paranoid ... and nobody wants to be near everybody.” (Exhibit 1, p. 14.) This, combined with pandemic related economic shutdowns, caused his gross income to decrease from \$30,000 in 2019 to approximately \$20,000 in 2020, which is a 33.3% reduction.

Apparently, DETS initially found the claimant eligible for PUA, and he was paid PUA benefits from May through early November 2020. DETS ultimately determined, however, that he was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a “covered individual” under the program. When DETS provided notice of this determination, the claimant was apparently told he would have to repay a significant sum of the overpaid benefits. It is not clear whether he was ever given a formal written notice to repay, or whether he has ever been informed of the opportunity to seek a waiver of the repayment obligation, or of the opportunity for a hearing regarding the repayment obligation.

DETS sent the claimant a letter dated November 10, 2020, entitled Notice of Non-Monetary Issue Determination, and stating that the claimant did not meet eligibility requirements for the PUA program. The letter states the reason for the decision as follows:

You have been self employed as a Seasonal contractor and reported to be impacted by COVID-19 on 03/28/2020; however, your business is deemed essential and allowed to operate, you did not have current work lined up at the time of impact and you have no medical condition restriction you from working during the pandemic.

The claimant timely submitted an appeal of this determination by letter to DETS dated December 7, 2020.

#### **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 July 21, 2020, by the U.S. Department of Labor:**

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.<sup>1</sup>

**APPLICATION**

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance (PUA) defines a “covered individual” as a person who is not eligible for

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<sup>1</sup> Emphasis added.

unemployment benefits under any State or Federal program and who is unemployed because of one or more reasons related to the COVID 19 pandemic.

It appears that DETS determined the claimant ineligible due to the claimant's business being deemed essential and allowed to operate, and because he did not have jobs lined up when the pandemic hit.

Guidance from the US Department of Labor in UIPL 16 20 Change 2, quoted above, holds that an independent contractor who experiences a significant reduction in work as a direct result of the pandemic may be considered a covered individual. The claimant's loss of income from his specialty contractor business is clearly within the scope of COVID 19 impacts that UIPL 16-20 Change 2 was intended to address. His testimony that his income suffered a 33% reduction due to the pandemic was credible and consistent with known economic conditions in Alaska during the timeframe when he normally would have been steadily working April through November 2020. This category of eligibility does not require that the claimant have work "lined up" in advance, as long as they can show that the pandemic resulted in a diminution or reduction in their work. The claimant adequately demonstrated such a reduction in this case.

The Tribunal finds the claimant met the definition of a covered individual for the period from the week ending April 4, 2020 through the week ending November 28, 2020.

If the net effect of this decision results in some of DETS's overpayment claim remaining in effect, the claimant may qualify for a waiver from recoupment or, if a waiver is not granted, he must at least be afforded an opportunity for an appeal hearing regarding the overpayment obligation, in which such matters as estoppel could be explored.<sup>2</sup>

DETS has advised OAH that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available, the claimant can call the BPC at 907 465 2863, 1 888-810 6789, or email to [jnu.bpc@alaska.gov](mailto:jnu.bpc@alaska.gov).

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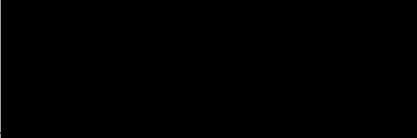
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<sup>2</sup> When DETS seeks repayment, the claimant must be informed of the opportunity to seek a waiver excusing him from repayment, the opportunity for a hearing on that issue, and any other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.b.

## DECISION

The determination issued on November 10, 2020 is REVERSED. The claimant is eligible for the benefits from the Pandemic Unemployment Assistance program, effective from the week ending April 4, 2020 through the week ending November 28, 2020.

Dated: June 17, 2021,


  
Andrew M. Lebo  
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 June 17, 2021, the foregoing decision was served on Kerri Edwards (by U.S. mail); a courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

  
Office of Administrative Hearings