

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

In the Matter of)
)
BANKS PREVATT) OAH No. 21-0447-PUA
) Agency No. P21 064
_____)

APPEAL DECISION

Docket Number: P21 064

Hearing Date: April 12, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Banks Prevatt

None

CASE HISTORY

The claimant, Banks Prevatt, 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 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 April 12, 2021. Mr. Prevatt testified under oath. The Division of Employment and Training Services (DETS) provided written materials but was not a live participant. Mr. Prevatt also submitted written materials, including documents addressing COVID-19 mandates and restrictions. Many of those documents pertained to mandates in Whittier, California rather than Whittier, Alaska, however.

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

FINDINGS OF FACT

Mr. Prevatt established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 8, 2020. The Department of Labor and Workforce Development initially found him eligible for PUA and issued benefits from the week ending April 4, 2020 through the week ending October 31, 2020. It subsequently redetermined the case and found that he was not impacted by COVID-19 in a manner that made him a covered individual for purposes of PUA. It requested repayment.

Mr. Prevatt is 79 years old. He is self-employed in the real estate business and works year-round selling properties in Alaska and Florida. His primary residence is in Florida, but he also owns a home in Alaska. He is typically in Alaska from late June or early July through late September, though he closes Alaska deals in other months as well. His Alaska sales primarily derive from properties in Whittier, including the Begich Towers. In 2019, Mr. Prevatt's gross revenues from work in Alaska totaled \$44,458.

He did not have any Alaska income in the first half of 2020. He had plans and plane tickets to be in Alaska from July 3, 2020 through late September. Starting around March 30, 2020, the claimant began to feel the impact of the COVID-19 pandemic on his Alaska work. Some clients were unable or unwilling to fly to Alaska to visit properties. The State of Alaska imposed testing and quarantine requirements that made travel significantly more difficult. The Begich Towers in Whittier asked Mr. Prevatt not to bring non-residents into the building, particularly after a COVID-19 outbreak in May and June. And, Mr. Prevatt concluded that it was not wise for him to risk infection while traveling to Alaska or being in the Begich Towers given his age and status as a former smoker. He did not come to Alaska in 2020.

The claimant was able to close two or three Alaska real estate transactions while working remotely. It appears they occurred in July, August, and possibly December 2020. His gross 2020 revenues from work in Alaska were \$14,057. The reduction in his Alaska income was significant and likely was a direct result of the COVID-19 pandemic.

Alaska sales are only one part of the claimant's income from real estate. His gross revenue from sales in Florida is typically \$60,000 to \$70,000. In 2019, it was \$54,535, which was unusually low. His 2018 Florida gross revenue was \$78,117. In 2020, it was \$76,922.

The claimant felt that COVID-19 was no longer having a significant adverse impact on his real estate work by the end of October or November 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 by 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.

* * * *

11. Question: Is a freelance writer who works from home, but is no longer getting paid for any work, eligible for PUA?

Answer: It depends. Section 2102(a)(3)(B) of the CARES Act provides that an individual who has the ability to telework with pay is not covered under PUA. However, if the freelance writer has experienced a significant diminution of freelance work because of COVID-19, regardless of his or her ability to telework, he or she may be eligible for PUA under the additional eligibility criterion established by the Secretary pursuant to Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, though his or her benefit amount may be reduced because of income from continued partial employment.

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. There is no disagreement that the claimant was not eligible for a claim for regular or emergency unemployment benefits in 2020.

Guidance from the U.S. Department of Labor in UIPL 16-20 Change 2, above, holds that a self-employed individual who experiences a significant reduction in work as a direct result of the pandemic may be considered a covered individual. This is true even for individuals who could earn some income through telework, as Mr. Prevatt did in 2020.

At first glance, it appeared the claimant satisfied the significant diminution standard because his Alaska revenue dropped significantly in 2020. However, the undersigned could find no basis for reviewing the claimant’s Alaska income in isolation from his total income. Despite a significant reduction in 2020 revenue from Alaska, his income from Florida transactions was notably higher than the prior year. The increase offset much of the claimant’s loss from Alaska.

The claimant’s 2020 gross revenue from Alaska and Florida was \$90,979. This is roughly an \$8,000 or 8% reduction from his 2019 gross revenue from both states, which totaled \$98,993. This does not constitute a significant diminution that would qualify the claimant for PUA benefits.

The claimant did not show eligibility based on other reasons in the Act. Though he likely was at heightened risks of complications from COVID-19 due to his age and health history, he was not advised by a health care provider to self-quarantine. Even if he had, the ability to telework mitigated the financial impact of working from Florida. Travel to Alaska became more difficult due to testing and quarantine requirements or recommendations, but the claimant was not prevented from returning to Alaska or to Whittier. Bringing clients to the Begich Towers required permission, but it does not appear all visits were prohibited. The claimant indicated that some agents accessed units to take photos, and at least one buyer visited a unit in person.

Because a significant diminution of business services was not shown, the undersigned cannot find that the claimant meets the definition of a covered individual beginning the week ending February 8, 2020 or anytime thereafter.

If the claimant believes he may be unable to repay overpaid benefits or that repayment should be waived, the Division has advised that its Benefit Payment Control (BPC) office can provide information about available options. The BPC can be contacted at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

DECISION

The determination issued on September 23, 2020 is **Affirmed**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program.

Dated: April 16, 2021

Signed

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 April 16, 2021 the foregoing decision was served on Banks Prevatt (by mail and email). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

Signed

Office of Administrative Hearings