

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

In the Matter of)
)
RODNEY YOUNG) OAH No. 21-0649-PUA
) Agency No. P21 069
_____)

APPEAL DECISION

Docket Number: P21 069

Hearing Date: May 10, 2021

CLAIMANT APPEARANCES:

Rodney Young

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Rodney Young, timely appealed a December 2, 2020 determination denying him Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Division of Employment & Training Services found that the claimant was not eligible for the PUA program starting the week ending February 8, 2020, because he was not impacted by Covid-19 in a manner that made him a “covered individual” as defined by section 2102 of the Act.

The Department of Labor referred the appeal to the Office of Administrative Hearings on April 1, 2021. Under the terms of referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on May 10, 2021, with the record held open for an additional day to receive supplemental documents. Mr. Young 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

Mr. Young established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 8, 2020. He was not eligible for regular or other unemployment benefits because he did not have wages in covered employment on which to base a claim. He was initially approved for PUA benefits, but then a

redetermination by DETS resulted in his being retroactively denied and instructed to repay any benefits previously issued.

Mr. Young is 57 years old. Beginning in 1998 he worked for 18 years as a solicitor for the Schriners, a Masonic philanthropic fraternity. His job involved building relationships with individuals and businesses primarily within the Anchorage community who then committed to donating to the fraternity. Mr. Young was an earnest and credible witness, and he described the significant efforts he had made over the years to connect with potential donors and organize local events to promote the Schriners fraternity and its mission.

Approximately five years ago the Schriners reorganized and eliminated all solicitor positions nation-wide. By this time Mr. Young was well known by many in the Anchorage area as an effective and personable fund raiser, and he was soon contacted by the Alaska Scottish RiteCare Foundation, a Masonic nonprofit dedicated to providing support to children with language disorders. Mr. Young agreed to work for the organization as an independent solicitor. Scottish RiteCare did not pay him a stipend or salary. His income was based solely on the fixed commission he earned from donations he secured for the organization. As an independent contractor he was responsible for his own office and business expenses, which included certificates for smaller donors, plaques for those who made larger contributions. In 2019 he earned roughly \$20,000.

The claimant testified that in December of 2019 he began hearing more coverage in the news about the Covid-19 virus which was concerning. At the beginning of January 2020 he went to over a hundred businesses to meet with potential donors, shake hands, talk about the mission of Scottish RiteCare. But by the middle of the month he was becoming increasingly anxious about being active in the community as the spread of the virus gained momentum. Donations slowed considerably as business owners began to suffer the economic impact of the pandemic. Mr. Young stopped visiting with people in person and began making phone calls to solicit donations. Few people were in a position to contribute, however, and many asked that he reach out again the following year, presumably when the economy had recovered.

On March 15, 2020 the claimant left the state to bury his younger brother who had died of Covid-19. He returned on March 31, 2020. State mandates required that he quarantine for 14 days upon returning to Alaska. During the weeks he was gone for the interment of his sibling, as well as the time he was restricted to his house, he continued to make phone calls to solicit donations.

Mr. Young testified that he was very scared of contracting Covid-19, especially having witnessed his brother succumb to the virus. He remained home for April through July, still contacting donors, but also trying not to harass struggling business owners and possibly jeopardize longstanding relationships. Many entities withdrew pledges made earlier in the year, and 22 of his prior sponsors cancelled altogether.

It wasn't until November and December 2020 that donors began favorably responding to Mr. Young's solicitations for donations again. Contributions were lower than in years past, but many people asked to remain on his donor list.

Mr. Young continues to reach out to community members, make calls, and maintain the relationships that he has worked many years to cultivate. He acknowledges that it is still a very difficult time to be an independent solicitor but is gratified that the economy is slowly improving, and he reports feeling optimistic about his future raising money for Scottish RiteAid.

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.¹

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 one of a list of reasons related to the COVID-19 pandemic. The claimant’s history of independent contractor employment did not represent employment that would qualify him for a claim for regular or emergency unemployment benefits in 2020.

Guidance from the US Department of Labor in UIPL 16-20 Change 2, above, holds that independent contractor who experiences a significant reduction in work as a direct result of the pandemic may be considered a covered individual. Mr. Young, whose profession is highly dependent on the financial solvency of businesses whose profits were significantly impacted by the pandemic, is a classic example of such a worker. Although some of his work can be done from home, he cannot raise money if his donors have gone bankrupt or are struggling to survive a terrible fiscal year. In this respect, he is similar to the example, quoted above, of a freelance writer who, though still able to work, may still suffer a sufficient loss of profits due to the pandemic to be a covered individual.

In denying his claim, DETS apparently felt that Mr. Young had simply opted not to work at all during the pandemic. But through his testimony the claimant established

¹ Emphasis added.

that he worked to the extent possible and was successful to a limited degree. He reported his income to DETS, and in some weeks it may be enough to reduce his PUA benefit to zero. DETS will need to evaluate this week by week, bearing in mind that there can be a lag between securing a donation and actually collecting the pledge.

The Tribunal finds the claimant did not meet the definition of a covered individual in January, February and the beginning of March 2020. While donations may have slowed, fears regarding the spread of Covid-19 had not reached the point of having a significant impact on the economy. Beginning the week ending March 21, 2020, however, businesses began to shut down or cut hours in the anticipation of a difficult financial year and Mr. Young met the definition of a covered individual. Eligibility continued into December 2020, after which a determination has not been evaluated.

DECISION

The determination in [REDACTED] is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending March 21, 2020 and ongoing to the date of the decision under review. The Division may adjust benefits for weeks in which income was earned.

Dated: May 13, 2021

[REDACTED]
Danika Swanson
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 May 13, 2021, the foregoing decision was served on Rodney Young (by mail/email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

[REDACTED]
Office of Administrative Hearings