

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

In the Matter of)

JANA DAVIDSON)
_____)

OAH No. 21-0695-PUA
Agency No. P21-093

APPEAL DECISION

Docket Number: P21-093

Hearing Date: May 12, 2021

Claimant Appearances:

DETS Appearances:

Jana Davidson

None

CASE HISTORY

The claimant established a claim for Pandemic Unemployment Assistance (PUA) benefits effective the week ending February 8, 2020. After paying over \$17,000 in benefits, the Division of Employment and Training Services (DETS) determined the claimant was not a “covered individual” eligible for PUA benefits and issued a Notice of the determination to the claimant December 22, 2020 [REDACTED]

[REDACTED] The determination was timely appealed December 28, 2020.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on 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.

This appeal was heard in a recorded hearing on May 12, 2021. The DETS chose not to appear and provided only written materials for the hearing. Ms. Davidson testified under oath but presented no other witnesses. The record was left open to May 21, 2021 to allow Ms. Davidson to secure records verifying her self-employment as a home IT installation technician.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act from the week ending February 8, 2020.

FINDINGS OF FACT

Ms. Davidson testified that she earns self-employment income doing home Local Area Network and computer installation, providing advice and set of home server and cloud storage, and providing cable installation during home remodeling jobs. She has been doing this for several years. She also manages her own stock portfolio. Ms. Davidson stated that her target clientele are elders in the Kenai-Soldotna area, who appreciate having a reliable person come to their home to

provide this service. She does not work through a company and does not do gig work through a local computer store. Her business relies largely on word of mouth. She stated she earned about \$4,000 to \$5,000 in 2019 in this business and payment is usually in cash.

Ms. Davidson applied for PUA benefits in March 2020. She provided prolific documentation of her responses to the DETS's requests for information, including a copy of her 2019 tax return as requested. However, the tax return did not include a Schedule C report of self-employment income on Schedule SE, nor records of payment of self-employment taxes (line 15, Form 1040), nor business income (line 3, Schedule 1). Instead, it included a Schedule D, Capital Gains and Losses reflecting her sales of her own stock and fund assets.

When presented with the lack of report of her self-employment earnings in her tax records which are part of the record, Ms. Davidson stated that her tax records were accurate, and that she hadn't earned any money as a home IT installer in 2019. However, she did state she had at least two jobs lined up in January 2020 to do and that these jobs were cancelled due to the COVID-19 pandemic, because people did not want strangers in their homes. The record was left open to allow her to obtain verification of the cancellation of these jobs.

EXCERPTS OF RELEVANT LAW

The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance

(a) DEFINITIONS.—In this section:

...

(2) COVID-19 PUBLIC HEALTH EMERGENCY.—The term “COVID-19 public health emergency” means the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020, with respect to the 2019 Novel Coronavirus.

(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—

...

(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;

...

(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);

Unemployment Insurance Program Letter No. 16-20, change 1, issued by the Secretary of Labor on April 27, 2020, added eligibility provisions under Section 2102(a)(3)(A)(ii)(I)(kk): An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19 reasons listed above, including an independent contractor who experiences a "significant diminution of work as a result of COVID-19.

APPLICATION

Most of the material provided by Ms. Davidson, and her argument to the ALJ, was directed to her compliance with requests to contact the DETS and her provision of records. She understood that the basis for the denial of benefits and the determination that she was not eligible to be that "attempts to reach you for more information were unsuccessful." (Ex. 1, pg. 3). The DETS records (Ex.1, pg. 11) show that the denial details given online state: "You reported being self-employed and impacted by COVID-19 on 3/01/20 as not being able to perform your self-employment activities. However, attempts to reach you for additional information were unsuccessful." Ms. Davidson produced copies of her hand-written logs showing that she had telephoned back to the DETS after receiving the voicemail. She acknowledged receiving a voicemail from "Keith" on December 17, 2020, but she stated "Keith" did not say his call was about PUA benefits. She also produced copies of the correspondence detailing provision of her tax records to the DETS.

However, the adjudication note of December 21, 2020 (Ex. 1, pg. 10) states: "12/16 LMTC tried to take SOF. 12/21 CC, no answer. No business license. Tax return does not have a Schedule C indicating a business. Deny elig." In short, the

real reason for denial was failure to provide information documenting a self-employment business, not simply failure to call the DETS staff back.

Ms. Davidson argued that the DETS had previously determined that she had a business and paid benefits accordingly. She included a copy of a Notice of Income Verification from DETS dated July 21, 2020, stating “We were able to verify your income using the documentation submitted. This income has been recorded as \$4,939.00.” However, this number is clearly an error – it matches the number (albeit recorded as positive instead of negative) at line 16 of Ms. Davidson’s Schedule D, Capital Gains and Losses (Ex. 1, pg.18). In short, instead of having income as a result of her Schedule D activity, Ms. Davidson lost money. It appears that a clerk in DETS misunderstood Ms. Davidson’s activity of selling her own capital assets (i.e., investments) as “self-employment.”

Self-employment can take more forms than regular engagement in an independently established trade, profession, or service, such as real-estate broker, landscaper, or accountant. While a business license is required for the privilege of engaging in business in Alaska, AS 43.70.020(a) a person who supplies services “as an employee” or who supplies services but does not represent themselves as “regularly engaged in furnishing goods or services” is exempt from the license requirement. AS 43.70.105.

Ms. Davidson testified she did not get a business license because she didn’t think she had a business. She explained that she had no building or store or office, so she didn’t think she had a “business.” Alaska law defines a “business” as “a for profit or nonprofit *entity* engaging or offering to engage in a trade, a service, a profession, or an activity with the goal of receiving a financial benefit in exchange for the provision of services, or goods or other property.” AS 43.70.110. It is not surprising that unsophisticated gig workers, independent contractors working as employees, or casual service providers would not understand that they may need to have a business license as an entity covered by AS 43.70.110(1). Therefore, I do not find the lack of an Alaska business license to be dispositive of Ms. Davidson’s appeal.

Ms. Davidson conceded that she must not have earned money as a home IT installer during 2019 because she did not report it as income on her 2019 taxes. Ms. Davidson testified that she had been previously engaged in providing home IT services, and that she lost jobs she would have performed as a result of the pandemic. She described two families for whom she was to do network installation, one of which was traveling at the time of the hearing. Ms. Davidson produced as corroborating evidence two letters. A letter from Sherryl Petrie, dated May 12, 2021, stated that she had been planning in January – February 2020 to have some IT work done at her home and that she spoke with the claimant about


doing it. Ultimately, she did not hire Ms. Davidson because, due to COVID-19, “I did not feel comfortable having non-essential personnel in my home.” She stated she felt that “Ms. Davidson has lost income due to the Covid-19 pandemic.” The second letter (dated May 13, 2021), from Tisha and Ralph Swiss, stated that “We know that Ms. Davidson is self-employed and provides IT services. We . . . believe that Ms. Davidson has lost income opportunities due to the Covid-19 pandemic.”

While the Swiss letter does no more than corroborate Ms. Davidson’s local reputation as a provider of IT services, the Petrie letter corroborates Ms. Davidson’s testimony that she was planning to provide services to clients, but that the engagement of her services by her clients was interrupted by the Covid-19 pandemic. This is a close case. I find that, while Ms. Davidson would not have earned much more than the \$4000 - \$5000 she claimed she earned in the past, she has lost all her planned jobs as a result of COVID-19, so she did suffer a “significant diminution” of her anticipated work. I conclude that she was eligible as a “covered individual” under Section 2102(a)(3)(ii)(A)(I)(kk) and (jj).

DECISION

The determination of December 22, 2020 (Letter ID: L0007247005) is reversed.


Dated: May 26, 2021.



Kristin Knudsen
Administrative Law Judge

APPEAL PROCEDURE

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 27, 2021, the foregoing decision was served on Jana Davidson (by mail and by email to: ). A courtesy copy was emailed to the UI Support Team and the UI Appeals Office.


Office of Administrative Hearings