

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

In the Matter of)	
)	
SHARON SIMKO)	OAH No. 21-2436-PUA
_____)	Agency No. P21 1019

APPEAL DECISION

Docket Number: P21 1019

Hearing Date: November 30, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Sharon Simko

None

CASE HISTORY

Sharon Simko filed a claim for Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136 on September 4, 2021. On September 17, 2021 the Division of Employment and Training Services (DETS) issued a determination that denied PUA benefits. Ms. Simko filed a timely appeal. The Department of Labor referred the appeal to the Office of Administrative Hearings on October 28, 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 November 30, 2021. Ms. Simko appeared telephonically from Fairbanks and testified under oath. The record remained open to allow Ms. Simko to submit further documentation of her self-employment through December 1, 2021. The DETS chose not to appear or to make a representative available by telephone; it relies on the documents it submitted and that were admitted as Exhibit 1, pages 1 through 27. Ms. Simko submitted a 23-page fax which is admitted as Exhibit 2, pages 1 through 23. The ALJ requested, with Ms. Simko's knowledge, that the DETS send copies of the tax documents referred to in the adjudicator's notes (Ex. 1, pg. 15) "as soon as possible", but no reply had been received by December 20, 2021, and the record is deemed closed.

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

FINDINGS OF FACT

Sharon Simko filed a claim for Pandemic Unemployment Assistance benefits, which, because she did not file until after January 31, 2021, cannot be effective before

December 6, 2021. The DETS determined that the claimant was not eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program, specifically that she did not substantiate employment or self-employment as required by the Continued Assistance Act (Pub. L. 116-260), which amended the CARES Act by adding section 2102(a)(3)(A)(iii).

Ms. Simko was self-employed as a babysitter in 2019. She worked at Lowe’s Home Center in Fairbanks from May 27, 2020 through July 1, 2020. (Ex. 1, pg. 18). Ms. Simko did not deny that she left Lowe’s voluntarily. Ms. Simko, who is seventy-one years old and now reliant on her Social Security pension, testified that she established a business (Bright Office Solutions, LLC). Essentially, she planned to provide advice on office management and arrangement, based on what she had learned through her prior experience as well as attending classes and workshops in this field. Her one client in 2020 was her daughter (proprietor of Simko Family Medicine, LLC), who hired her as a contractor to oversee the shift her natural medicine practice to electronic billing. This contract resulted in payment of \$10,000 in 2020, which was reported on a Form 1099.

Ms. Simko testified that because offices closed in 2020 in response to the COVID-19 pandemic, she was unable to get her business off the ground. Her business model was aimed at in-person worksites and she was unfamiliar with remote work models. Ms. Simko testified that she did “planning” for her business in 2020. However, the business license is dated in December 2020, and she conceded that the payment she received from Simko Family Medicine was payment for work that she was to accomplish in 2021. She explained that in-person office work had not come back, so she had not been able to do more work in 2021 than that she did. She testified that she had supplied her tax returns to the DETS, and that she had handwritten and mailed her tax return all her life, and that what she had submitted was a real copy of her return.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

THE CARES ACT OF 2020, PUBLIC LAW 116-136, TITLE II, SEC. 2102 PANDEMIC UNEMPLOYMENT ASSISTANCE, AMENDED BY CONSOLIDATED APPROPRIATIONS ACT, PUBLIC LAW 116-260, DIV. N, TITLE II, SUBCHAPTER IV, SEC. 241 (A), CODIFIED AS 15 U.S.C. § 9021:

(a) DEFINITIONS.—In this section:

...

(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—
 - . . .
 - (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;
 - . . .
 - (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
 - (iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; 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 NO. 16-20, CHANGE 1.

Guidance 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

I find that Ms. Simko did supply her requested tax return to the DETS. I find that Ms. Simko did attempt to open a consulting business in 2020, but not until months after the declaration of a COVID-19 disaster declaration¹ or mandated closure of non-essential business.² Thus, the question is not whether an existing business was impacted by COVID-19, but whether a *future* business was impacted by COVID-19.

Ms. Simko’s claim is based on her belief that she would have been able to earn more money as a consultant if COVID-19 had not occurred than the \$10,000 she was paid in December 2020. However, she did not have a business in place by March 13, 2020, when Governor Dunleavy began issuing Health Mandates. She did not have any contracts in place that were disrupted by the short period of time that non-essential businesses were directed to close. She did not point to specific offices that refused her services. Her testimony was that office closures have lessened her capacity to do in-person marketing, but she was unable to distinguish a continuing COVID-19 impact from changes to the market in Fairbanks.

Because she filed a claim for benefits after January 31, 2021, Ms. Simko must show that the *continuing* impact of COVID-19 in 2021 caused a drop in her business from 2020’s \$10,000. For these purposes, Ms. Simko’s description of the delay starting her business in 2020 is largely irrelevant; the pertinent question is whether the ongoing impact of the COVID-19 public health emergency impacted her ability to market and perform her business in 2021 beyond completing the contract with Simko Family Medicine.

Ms. Simko produced no evidence that COVID-19 public health orders prevented businesses like those she targeted, professional business offices, from operating in 2021. She is not aiming her services at large companies or government bodies. There is a flat “white collar office” economy in Fairbanks and the Interior Alaska economic

¹ Declaration of Public Health Disaster Emergency, Gov. Mike Dunleavy, March 11, 2020.

² COVID-19 Health Mandate 011, issued March 27, 2020. Modified by COVID-19 Health Mandate 016, issued April 22, 2020 eff. May 8, 2020, in particular, Attachment H, Non-essential Non-Public-Facing Businesses.

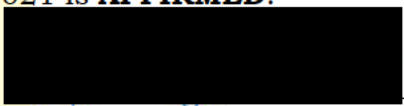
region.³ This is as likely to be the reason for the lack of demand for her services as COVID-19.⁴ She did not produce evidence that she was unable to market her business through a website, email, or directed electronic advertising because of COVID-19. As she freely admitted, she was not familiar with the tools for organizing virtual or hybrid offices. Thus, her business may not be successful because she is not providing the services offices currently demand.

I find that while Ms. Simko did create a consulting business at the end of 2020, but she did not establish through evidence that her business suffered “significant diminution” as a direct result of COVID-19 in 2021. I conclude she is not eligible for PUA benefits.

DECISION

The determination of September 17, 2021 is **AFFIRMED**.

Dated: December 21, 2021,


Kris Knudsen
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

³ The Department of Labor and Workforce Development, Research and Analysis Division’s monthly employment statistics for the Interior region (including Fairbanks) show that November 2021 closed with 2900 persons employed in the Professional and Business Services sector and 1300 in the Financial Activities sector. In 2020, there average was 2800 and 1200 respectively; in 2019, 3100 and 1200 respectively; in 2018 3100 and 1200 respectively, and in 2017, 2900 and 1200 respectively. In short, the sector of her employment did not show a significant drop in employment from 2020 to 2021; nor, over time, any significant growth.

⁴ The Department of Labor and Workforce Development published its Occupational Forecast for 2018 to 2028 in 2019, prior to the COVID-19 pandemic. That forecast predicted a net growth of 2 positions in the Interior Economic Region in the occupation most closely aligned to Ms. Simko’s business, “Training and Development Specialist.” Available at [Occupational Forecast Alaska 2018 - 2028 | Department of Labor Research and Analysis](#) . “Business Operations Specialists” were predicted to suffer a net loss of 4 positions. Ms. Simko does not have the educational background to qualify as a Management Analyst, but even that field was not predicted to grow more than 1.9% over 10 years.

I certify that on December 22, 2021, the foregoing decision was served on Sharon Simko (by mail and email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings