

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

In the Matter of)
)
NIKITA FEFELOV) OAH No. 21-0777-PUA
_____) Agency No. P21 133

APPEAL DECISION

Docket Number: P21 133

Hearing Date: May 27, 2021

CLAIMANT APPEARANCES:

Nikita Fefelov

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Nikita Fefelov, timely appealed a December 16, 2020 determination, issued on December 17, 2020, 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 April 1, 2021. Under the terms of the referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. The procedures at AS 44.64.060 do not apply.

The issue before the ALJ is whether the claimant is a “covered individual” as defined by the Act and therefore eligible for PUA benefits.

FINDINGS OF FACT

The claimant established a claim for PUA benefits effective the week ending April 11, 2020. Mr. Fefelov lives in Nikolaevsk, Alaska. He works doing odd jobs including small home repairs, yard work, oil changes, and any other small jobs people need help with. Usually he is paid for his work, but not always. When he is paid, Mr. Fefelov is paid in cash, and he does not keep track of how much he earns.

Mr. Fefelov was uncertain as to how often he worked in 2019, or how much he earned, but he felt he worked a couple of hours each day prior to COVID 19, and stopped getting any work around March of 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—

* * *

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section . . .

UIPL 16-20, Change 2 Issued by USDOL 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.

APPLICATION

Mr. Fefelov’s work doing odd jobs has the potential to qualify him for benefits as an independent contractor. However, much of his work can be done outside, or inside with proper social distancing from others. He has not provided any evidence of specific instances where people would not use him for odd jobs because of the pandemic. While one may assume he lost some work because of the pandemic, he has not shown how much of the reduction in his work was a result of the COVID-19. In

addition, he does not have any records of how much he worked or earned prior to the pandemic. Mr. Fefelov's testimony about his work schedule and earnings was vague. In order to qualify for PUA benefits under the CARES Act, Mr. Fefelov must show a "significant diminution of services." The Tribunal cannot conclude that he experienced this diminution without stronger evidence of what Mr. Fefelov's pre-pandemic earnings were.

The Tribunal finds the claimant does not meet the definition of covered individual for the purposes of receiving benefits from the PUA program effective the week ending April 11, 2020, through the week ending December 19, 2020.

DECISION

The determination made on December 16, 2020, is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending April 11, 2020, through the week ending December 19, 2020.

Dated: June 1, 2021


Jeffrey A. Friedman
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 1, 2021 the foregoing decision was served on Nikita Fefelov (by mail and by email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings