

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

In the Matter of)
)
WILLIE FRANK) OAH No. 21-0951-PUA
) Agency No. P21 236
_____)

APPEAL DECISION

Docket Number: P21 236

Hearing Date: June 8, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Willie Frank

None

CASE HISTORY

Willie Frank timely appealed a January 19, 2021 determination (Letter ID L0009240818) denying him 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 in April 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 June 8, 2021, with the record held open until June 16, 2021 to allow submission of clarifying information regarding eligibility for Unemployment Compensation (UC). 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. Mr. Frank testified under oath.

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

FINDINGS OF FACT

Mr. Frank's PUA claim is only for the week ending October 31, 2020 and afterward. It grows out of the October 27, 2020 emergency transition of the Lower Kuskokwim School District (LKSD) back to remote learning, which affected his intermittent but substantial substitute work. DETS denied all PUA benefits on the ground that "you are still working your normal hours with LKSD."

Willie Frank lives in the small village of Tuntutuliak. For a long time, he has had intermittent but sometimes quite substantial amounts of employment with LKSD as a

substitute janitor and teacher. In summer, he does a combination of subsistence and wage work when available, including a three-week job with Eagle Tanks, Inc. last summer.

In the first ten weeks of 2020, Mr. Frank had about five weeks of substitute work with LKSD. He had no work from mid-March through May of 2020, during the first COVID-related school closures, but there is no PUA application covering that period.

In the fall semester of 2020, LKSD reopened and operated most schools in-person for nine weeks. Mr. Frank worked three of those weeks, two as a substitute janitor and one as a substitute teacher.¹ On October 27, 2020, LKSD shut down in-person learning on an emergency basis due to a new COVID outbreak. This partial closure continued until March/April of 2021 (depending on grade level).

The shift to remote learning largely eliminated the need for the kind of substitute work Mr. Frank provides to the District. He did get about four days of work in January 2021 to help move some items in the school, which is somewhat distinct from his normal roles.

It is possible to find, more likely than not, that Mr. Frank's overall work volume was diminished significantly by the late October COVID-related partial closure of LKSD. Compared with his work levels just before COVID (5 out of 10 weeks) and in the fall of 2020 (3 out of 9 weeks), the less than one week in the 20-week span of last winter is a significant reduction. Of course, Mr. Frank would not have been employed in all of those weeks, but his total earnings were diminished.

Beginning the week ending March 20, 2021, Mr. Frank became eligible for UC, and received UC benefits from that week until the time of the hearing. The basis for the UC eligibility has not been explained but is not germane to this decision.

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

¹ In reaching this total, I rely on a combination of testimony and an LKSD questionnaire. The LKSD questionnaire was incomplete or inaccurate in several respects.

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—

* * *

(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; . . .

UIPL 16-20, Change 5 Issued by USDOL February 25, 2021

The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures.* [italics in original]

APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is unemployed because one of a list of reasons related to the COVID-19 pandemic and is not eligible for unemployment benefits under any State or Federal program. It appears to be undisputed that Mr. Frank was not eligible for unemployment compensation prior to the week ending March 20, 2021.

The DETS interactions with Mr. Frank about his unemployment seem to have been hampered by language or cultural communication barriers. In addition, the clarifications of UIPL Change 5 had not been issued when DETS made its determination. At this point, it is possible to see clearly that Mr. Frank suffered a diminishment of workload in the winter of 2020-21 because the substitute work he does is not needed during periods of remote learning. The shift to remote learning on October 27, 2020 arguably constituted a “closure” under subsection (jj) of the original CARES Act criteria. In any event, it certainly constituted a “partial closure” rendering

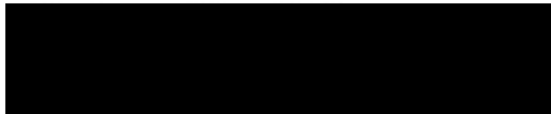
the employee “partially unemployed” within the meaning of Change 5’s special provision for educational workers.

The Tribunal finds the claimant meets the definition of a covered individual beginning the week ending October 31, 2020, the first week for which he applied. His eligibility ended with the week ending March 13, 2021, because he became eligible for UC the following week and UC eligibility precludes PUA eligibility.

DECISION

The determination issued on January 19, 2021 (Letter ID L0009240818) is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending October 31, 2020 and ending the week ending March 13, 2021. During this period, Mr. Frank had about four days of earnings in January, which he must report so that his benefits may be adjusted appropriately.

Dated: June 21, 2021





Christopher Kennedy
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 21, 2021 the foregoing decision was served on Willie Frank (by mail and by email to ). A copy has been emailed to the UI Support Team, the UI Technical Team, and the UI Appeals Office.


Office of Administrative Hearings