

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

In the Matter of)
)
MICHAEL ARMISTEAD) OAH No. 21-0902-PUA
) Agency No. P21 272
_____)

APPEAL DECISION

Docket Number: P21 272

Hearing Date: May 25, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Michael Armistead
Linda Armistead

None

CASE HISTORY

The claimant, Michael Armistead, timely appealed a December 29, 2020 determination¹ which denied 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 on May 3, 2021. Under the 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 recorded hearing took place on May 25, 2021. Mr. Armistead testified under oath, as did his wife Linda Armistead. The Division of Employment and Training Services (DETS) provided written materials but was not a live participant. The record closed on June 2, 2021. No post-hearing submissions were received.

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

FINDINGS OF FACT

Mr. Armistead established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 15, 2020. On December 29, 2020, the Division determined that he was not eligible for PUA starting the first week of his claim because he was not impacted by COVID-19 in a manner that made him a covered individual under the PUA program.

¹ Written notice of the determination issued on December 30, 2020.

The claimant is the owner of an auto repair business called L & M Auto Shop, LLC, in the Mat-Su region. The business opened in May 2018. Mr. Armistead and his wife both worked to support the business, and they employed two auto mechanics.

The business operated at a site the claimant leased. In 2019, monthly rent was \$3250, or \$39,000 per year. The business's 2019 gross receipts appear to have been \$80,121 or \$104,000; references were made to both numbers. The business was able to meet its financial obligations and was getting by. The claimant felt things were stable and would be improving. Starting with January 2020, the landlord raised the rent to \$3500 per month. This increased financial pressures on the business, but it was a manageable situation if revenues had remained stable or grown.

In January 2020, the claimant's gross receipts were only \$330. He earned even less in February. The claimant could not pay his expenses with such little income. He closed the business on February 22, 2020. At that time, he planned to find a new site and re-open as soon as possible.

Mr. Armistead could not find a new rental site, and the many uncertainties created by the pandemic in subsequent months prevented him from re-opening the garage. To survive while he had no income, he sold much of the business's equipment. As of the hearing date, the claimant was unable to re-open because he lacked funds to replace equipment the business requires.

Mr. and Ms. Armistead attributed the January and February collapse in business demand to the pandemic, noting that no other changes took place that could explain the sudden drop in revenue. They observed that the business's client base included many individuals concerned about an imminent social and economic collapse. They believe those individuals saw the potential for a pandemic before the risks were widely recognized, and they stopped spending money on non-necessities like collectible car projects well before the general population did.

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 by U.S. Department of Labor on 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

The parties agree the claimant is not eligible for regular or extended unemployment benefits. Guidance from the U.S. Department of Labor in UIPL 16-20 Change 2, above, holds that a self-employed individual who experiences a significant reduction in work as a direct result of the pandemic may be considered a covered individual.

Here, the claimant experienced a significant reduction of business income in January 2020 and the first three weeks of February 2020, such that he was forced to close the business altogether. This has resulted in substantial and ongoing financial hardship. The determinative question is whether the claimant’s sudden drop in revenue can be deemed a *direct result* of the COVID-19 public health emergency.


The evidence in the record is insufficient to show a direct relationship between the pandemic and the claimant’s January and February loss of revenue. Mr. Armistead began experiencing significantly reduced income more than a month before COVID-19

caused widespread fears and behavior changes in Alaska and the Mat-Su region. Though it is possible that some of the business's clients reacted to the potential for a pandemic as early as January 2020, the undersigned cannot find that is a likely explanation, at least on the evidence submitted. This claim therefore cannot be sustained.

DECISION

The denial determination issued on December 29, 2020 is **AFFIRMED**. The claimant is not eligible for PUA benefits as of the week ending February 15, 2020 and thereafter.

Dated: June 3, 2021

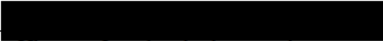

For: Kathryn Swiderski
Administrative Law Judge

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 4, 2021 the foregoing decision was served on Michael Armistead (by mail and email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Appeals Team, & UI Support Team.


Office of Administrative Hearings