

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

In the Matter of )  
 )  
RONALD LEE MOORE ) OAH No. 21-0898-PUA  
 ) Agency No. P21 273

---

**APPEAL DECISION**

**Docket Number:** P21 273

**Hearing Date:** May 25, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Ronald Lee Moore

None

**CASE HISTORY**

The claimant, Ronald Lee Moore, timely appealed a January 25, 2021 determination<sup>1</sup> 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. Moore testified under oath. The Division of Employment and Training Services (DETS) provided written materials for the hearing but was not a live participant.

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

**FINDINGS OF FACT**

Mr. Moore established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 8, 2020. The Division initially determined that he was eligible effective the week ending March 28, 2020. It issued benefits for that week through the week ending June 20, 2020. According to Mr. Moore, payments were suspended because of identity verification issues and an eligibility redetermination. On January 25, 2021, DETS found that the claimant was not impacted by COVID-19 in a manner that made him a covered individual under the program.

---

<sup>1</sup> The Notice letter for the decision is dated January 26, 2021.

Since July 1, 2017, Mr. Moore has been self-employed as a graphic designer. He owns and operates a small business called Blueteam Graphics. The claimant gets some clients from advertising on web services like Facebook and Craigslist. However, he gets most of his clients through his efforts to meet people in the community. He spends time posting flyers in businesses like coffee houses, restaurants, hair salons, and automotive shops. In doing so, he makes efforts to start conversations and develop relationships with potential clients. As a one-person operation, he tends to work one or perhaps two contracts at a time.

In 2019, the claimant earned gross receipts of \$11,203 from his business, with a net profit of \$11,038. He earned about the same the prior year. In 2020, the claimant's gross receipts totaled about \$3,500, a drop of more than 65% from prior years. He earned this income from January through mid-March. He was working on a project for a client in March when COVID-19-related shutdowns and restrictions began. The project was interrupted because of the pandemic and never completed. Just prior to the hearing in May 2021, that client contacted the claimant to discuss completing the work.

After mid-March 2020, the claimant continued to advertise his services online. He was not able to engage in his usual in-person business development work because of business closures and social distancing requirements caused by COVID-19.

The claimant is a single parent. In the spring of 2020, his son was in the 7<sup>th</sup> grade. The child's school closed due to COVID-19 in mid-March. It remained closed through most of the next academic year. The need to be home and supervise online schooling also limited the claimant from doing his usual business development work. However, the greater impact came from lost opportunities to engage in-person with potential new clients as well as the general loss of demand for the claimant's services while businesses were closed or operating on a limited basis.

### **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.

\* \* \*

11. Question: Is a freelance writer who works from home, but is no longer getting paid for any work, eligible for PUA?

Answer: It depends. Section 2102(a)(3)(B) of the CARES Act provides that an individual who has the ability to telework with pay is not covered under PUA. However, if the freelance writer has experienced a significant diminution of freelance work because of COVID-19, regardless of his or her ability to telework, he or she may be eligible for PUA under the additional eligibility criterion established by the Secretary pursuant to Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, though his or her benefit amount may be reduced because of income from continued partial employment.

## APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is not eligible for unemployment benefits under any State or Federal program and who is unemployed because of one or more listed reasons related to the COVID-19 pandemic. The claimant’s history of self-employment did not represent employment that would qualify for a claim for regular or emergency unemployment benefits in 2020.

Guidance from the US 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. Mr. Moore meets this criterion. His business is dependent on in-person interactions that were significantly curtailed by the pandemic. In addition, the demand for graphic design work dropped off dramatically from the kinds of small businesses that have been the claimant’s clients. Those businesses were not pursuing graphic design projects given the uncertainty and financial stresses resulting from the pandemic.


Although much of the claimant’s actual design work is done at his home, he cannot do the work if he has no clients. In this respect, he is similar to the example quoted above of a freelance writer who, though still able to write, may suffer a sufficient loss of demand for services due to the pandemic to be a covered individual.

The claimant meets the definition of a covered individual beginning the week ending March 28, 2020 and continuing through the date of the decision under review. Eligibility after the date of DETS’ January 25, 2021 determination has not been evaluated.

## DECISION

The determination in Letter ID L0009364179 is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending March 28, 2020 and ongoing at least through the week ending January 30, 2021. This brings the claimant current as of the January 25, 2021 date of the decision under review. Eligibility after that date has not been evaluated.

Dated: May 26, 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 May 26, 2021 the foregoing decision was served on Ronald Lee Moore (by mail and by email to [REDACTED]). A courtesy copy has been emailed to the DETS UI Technical Team, UI Appeals Team, & UI Support Team.

[REDACTED]  
Office of Administrative Hearings