

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

In the Matter of)
)
REEVE CARLSON) OAH No. 21-1301-PUA
) Agency No. P21 507
_____)

APPEAL DECISION

Docket Number: P21 507

Hearing Date: July 29, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Reeve Carlson

None

CASE HISTORY

Reeve Carlson, of Wasilla, Alaska appealed a February 12, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0009850244. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on July 1, 2021. Under the terms of referral, an administrative law judge (ALJ) hears and decides the appeal under procedures specific to PUA appeals. AS44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on July 29, 2021. Mr. Carlson testified under oath. 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.

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

FINDINGS OF FACT

Mr. Carlson's testimony established that he had a pattern of work predating the Covid-19 pandemic. Mr. Carlson's business, Carlson Construction, was started in 2015. In 2019 it had gross earnings between \$50,000 and \$60,000. He reports that these earnings were reported on the family 2019 tax return.

Mr. Carlson is a general contractor with limited licensure. His work is finish carpentry, specifically interior cabinetry and shelving. Most of his work is through general contractors who hire him to do interior finish carpentry. He also does interior finish carpentry for homeowners or property managers doing remodeling projects. He has

business cards and a sign on his truck. He credibly testified that in 2020, post Covid-19, he took all work offered to him. He testified that work that had been lined up was largely cancelled, and his established stream of referrals dried up beginning March 1, 2020 and that business remained substantially down through the end of December 2020.

Before Covid-19, Mr. Carlson expected 2020 to be a good financial year. In February he had begun a remodel project for a homeowner. Through February he was only in the demolition phase of that in-home remodel. The homeowner stopped the rest of the project March 1. The homeowner informed Mr. Carlson that the homeowner did not feel safe having Mr. Carlson coming into the home to do the work.

Before Covid-19, Mr. Carlson already had an additional two projects set up for the spring and summer. He expected to get at least \$15,000.00 from those contracts. Both jobs were for the Mat-Su R.V Park. When Covid-19 occurred, the owner of the Mat-Su R.V Park. could not fly back to Alaska due to Covid-19 travel and health restrictions, and as a result decided not to do that project.

As Mr. Carlson reached out to contractors and potential clients, he was repeatedly informed that individuals were not hiring for indoor work, particularly if they were now home doing telework or self-isolating. He got some work but earned only \$1,000 during the period he'd expected to earn \$15,000. He also experienced Covid-19 related loss of income beginning in September due to Covid-19 related supply chain issues. He reported that that issue continued through at least the week ending January 2, 2021.

Mr. Carlson's testimony established that he did not avoid taking work. For example, he also served as his child's home teacher for much of the time she was on remote learning due to illness, and/or school closing. He reports that he did not reduce his income to be a full-time care provider as he wasn't getting offers for work. He credibly reports that he never turned down work. In fact, when he got an opportunity to work, he would take his daughter, and her school laptop, with him to the work site.

His overall estimate is that in 2020 he earned only about 20-30% of his 2019 pre-Covid income. That testimony is credible. Mr. Carlson credibly reports that he was careful to make sure that he reported to the in a timely and accurate manner, and that he relied upon the division's findings that he qualified for PUA when he accepted and used the funds.

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—

* * *

(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; or

(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

In its February 12, 2021 Notice of Non-Monetary Issue Determination DETS informed Mr. Carlson that “You are self-employed doing construction and were impacted by COVID-19 on 03/01/2020 however, there were no mandates restricting essential services such as construction.” Mr. Carlson filed his appeal on March 5, 2021. His appeal is timely.

The documentary and testimonial evidence at the July 29, 2021 appeal hearing establishes that, as a self-employed individual, Mr. Carlson had regular income, an established pattern of work in his field of employ, and that he experienced a significant diminution of work opportunities directly related to COVID-19 beginning the week ending on March 7, 2020 and continuing through the end of December 2020.

The division raised the issue that construction was essential work and identified that as the sole reason to deny his qualifying as a covered individual. That issue should not disqualify him.

As established by the UIPL 16-20, Change 2 passage quoted above, an independent contractor can qualify for PUA even if working in a permissible line of work. All that is necessary is that the work suffer a “significant diminution” directly attributable to the pandemic. The Secretary of Labor has given such examples as Uber or Lyft drivers whose ridership has declined. In general, mandates did not shut these services down, but the income their drivers could earn was deeply cut by a decline in demand related to COVID-19. Mr. Carlson is in the same position: he could continue to work (and he did, when he could get and perform contracts), but demand for his in-home work was deeply affected by the pandemic, as was his supply chain for materials to use in his projects. Moreover, at times his ability to work was impaired by Covid-19 related child-care responsibilities.

If the division continues to seek recovery of previously paid benefits after this decision Mr. Carlson can apply for a waiver from repayment. No waiver will be granted if he does not seek it. If a waiver is sought but not granted, Mr. Carlson must be given a separate appeal hearing on that issue if he requests. This decision will affect repayment of previously approved benefits. The Division has advised the OAH that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available Mr. Carlson can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

DECISION

It is the determination of this tribunal that Mr. Carlson was a covered individual pursuant to The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance. He is eligible for benefits beginning the week that ended March 7, 2020, with continuing eligibility through the week ending January 2, 2021.

Dated: August 5, 2021,



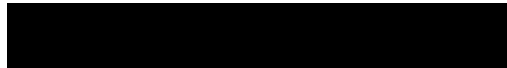
For Karla Huntington
Administrative Law Judge

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 August 5, 2021, the foregoing decision was served on Reeve Carlson (by mail). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.



Office of Administrative Hearings