

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

In the Matter of)
)
IAN DEMELLO) OAH No. 21-1594-PUA
) Agency No. P21 822
_____)

APPEAL DECISION

Docket Number: P21 822

Hearing Date: 9/15/21, 10/6/21

CLAIMANT APPEARANCES:

Ian Demello

DETS APPEARANCES:

Vanessa Lyons

CASE HISTORY

The claimant, Ian Demello timely appealed a May 27, 2021 determination 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 or about August 2, 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 September 15 and October 6, 2021. The claimant appeared and testified under oath on his own behalf. At its own election, the Division of Employment and Training Services (DETS or Division) provided written materials for the hearing and was not a live participant in the first day of the hearing. On request of the ALJ, DETS employee Vanessa Lyons appeared on behalf of the agency at the second day of the hearing and provided additional sworn testimony.

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

FINDINGS OF FACT

Ian Demello established a claim for Pandemic Unemployment Assistance benefits effective the week ending December 19, 2020. The Division determined that the claimant was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program.

The claimant testified that for about 18 years he was a commercial fisherman based in Dutch Harbor, Alaska. For about two years immediately prior to 2020, however, he worked as a seasonal self-employed housepainter and as a stay-at-home dad, caring

for his two young sons while their mother worked in the restaurant industry. Prior to the onset of the COVID-19 pandemic, in December 2019 the children's mother left the claimant and essentially abandoned him and the two boys, aged 13 and 9 years old. Thus, at the beginning of 2020 the claimant was primarily caring for the boys and was not working.

When the pandemic arrived in Anchorage, the boys' schools shut down on March 16, 2020, and the claimant's primary responsibility was caring for the boys and helping them get through online schooling from home. Over the summer of 2020, he had some assistance with childcare from another family member. During that period, he obtained short-term employment with Cadence General Contracting in Anchorage from mid-June to early August 2020, under a contract Cadence had for earthquake repairs and reinforcement at a Carrs warehouse. He was terminated due to lack of work at the end of the contract on or about August 2, 2020; at about that time he was losing his childcare assistance and would have had to quit the job about a week later in any event. The school year then began in mid-August 2020; their schools continued to be closed to in-person learning so the claimant still had to care for and assist his boys at home.

During the 2020-2021 school year, the claimant continued to look for work but found it quite difficult, given his need to be at home with his sons. He was unable to find work until August 2021, when he was able to resume his self-employed housepainting, subcontracting on residential interior and exterior painting jobs.

The claimant filed for PUA benefits April 12, 2021.¹ DETS found him ineligible and issued the May 27, 2021 denial notice at issue in this appeal (Letter ID L0013232238), which states the basis for denying eligibility as follows:

Under Section 2102 of the CARES Act of 2020, Public Law 116-136, you did not meet the eligibility requirements beginning the week ending December 19, 2020. ... You were impacted by COVID-19 on 3/16/20 after your children's school closed and had to quit your job with [Cadence] General Contracting. However [Cadence] General Contracting reported you were discharged 8/2/2020. You have not responded to requests for additional information. (Exhibit 1, p. 3.)

The claimant timely appealed the May 27, 2021 denial notice.

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¹ The Division issued numerous written determinations to him from April through June 2021 which were not provided by the Division for this hearing; the claimant provided them after the first day of the hearing, and a Division representative responded to questions about them at the second day of hearing on October 6, 2021.

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).

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.

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APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance (PUA) 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 reasons related to the COVID-19 pandemic. It is undisputed in this case that the claimant’s work history did not qualify him for a claim for regular, extended or Pandemic Emergency Unemployment benefits.

It is important at the outset to note that because the claimant filed his PUA claim in April 2021, DETS was limited in the timeframe within which it could potentially award PUA eligibility. For PUA claims filed on or after January 31, 2021, the claimant’s potential eligibility can only reach back to December 6, 2020 (thus the week ending December 12, 2020). For this reason, the claimant’s potential eligibility in the early stages of the pandemic, from mid-March 2020 until December 6, 2020, is not at issue in this appeal. (This limitation was explained to the claimant on the record during the hearing; *see also* Exhibit 1, p. 19.)

The Division’s stated rationale for denying the claimant’s PUA claim appears to be based on two factors: (1) an alleged failure by the claimant to provide information requested by DETS; and (2) the lack of a causal link between the pandemic and the loss of his job with Cadence General Contracting. According to the DETS representative Ms. Lyons, the claimant failed to respond to DETS’s requests for information pertinent to the closure of his sons’ schools. The claimant explained on the record, however, that while his claim was being processed he actually participated in a conference call with a PUA employee and a school administrator that detailed the schools’ closure dates. The claimant was responsive to DETS’s inquiries and provided the information that he had available to him.

Regardless of the responsiveness issue, however, the issue of causation was correctly determined by DETS. To be eligible for PUA benefits, a person must be able to show that the pandemic caused them to lose a job or an agreed-upon job opportunity. Each of the above eligibility categories from the CARES Act describes a scenario where a person lost a job, had to quit a job, was unable to get to their place of work, or variations on those themes, all as a direct result of the COVID-19 pandemic. In this case, while the claimant did have to stay home to care for his children, he failed to show that this interfered with an actual job or job offer that he had accepted. His loss of work at Cadence General Contracting was due to the job winding down at the end of the contract; in addition, it took place during the summer when school would have been out anyway, regardless of the pandemic. If the claimant could have shown that he lost the job due to his pandemic-related childcare needs and that the job would have continued on into the school year, he could have qualified for PUA benefits as of the week ending December 12, 2020 based on the school closures. The claimant, however, did not make that showing.

Similarly, even though the claimant's difficulties finding work during the 2020-2021 school year were clearly related to his childcare challenges resulting from the pandemic-caused school closures, his inability to find work is not a basis for PUA eligibility. As previously stated, PUA eligibility can only be based on a loss of a job or agreed-upon job offer, which the claimant was unable to show in this case.

Based on the foregoing discussion, the Division correctly found the claimant ineligible for PUA benefits.

DECISION

The Division's determination in its May 27, 2021 notice (Letter ID L0013232238) is hereby **AFFIRMED**.

Dated: January 14, 2022,




Andrew M. Lebo
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 January 14, 2022, the foregoing decision was served on Ian Demello (by U.S. mail & email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.



Office of Administrative Hearings