

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

In the Matter of)
)
TROY BLAINE SNOW) OAH No. 21-1877-PUA
) Agency No. P21 912
_____)

APPEAL DECISION

Docket Number: P21 912

Hearing Date: October 20, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Troy B. Snow

None

CASE HISTORY

Mr. Snow appealed a July 14, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Notice ID L0013951297. The Division of Employment and Training Services (Division) stated: “You are self-employed in the construction/ remodel /handyman field and reported being impacted by Covid 19 on 4/2/20; However, because your business was just created, diminished work or earnings resulting from the pandemic cannot be shown. You also reported being impacted when a carpenter position with Elizabeth Enterprises was rescinded; however, the business is not properly licensed or bonded to make an employment offer of that nature.”¹

The Division referred the appeal to the Office of Administrative Hearings on September 1, 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 matter was heard in a recorded hearing on October 20, 2021. Mr. Snow testified telephonically and under oath. At its own election, the Division of Employment and Training Services (Division) provided only written materials for the hearing and was not a live participant. The documents provided by the Division are identified as Exhibit 1 and were admitted into evidence at the hearing.

On October 20, 2021, an order was issued holding the record open until October 30, 2021. On October 21, 2021 an email was received from Ms. Valerie Goodwin. This was a statement that in January 2020 she had hired Mr. Snow to begin working for her on April 5, 2020. This email is identified as Exhibit A and is hereby admitted into evidence. On October 25, 2021 an email was received from Mr. Lucas James. This

¹. Exhibit 1: Page 3.

email discusses times in the past, and in 2020 when he had hired Mr. Snow to do odd jobs. This email is identified as Exhibit B and is hereby admitted into evidence.

The matter was referred to the ALJ to consider whether Mr. Snow meets the eligibility requirements under the act.

FINDINGS OF FACT

The evidence presented and Mr. Snow's credible testimony are the basis for these findings of fact.

Mr. Snow was only marginally attached to the economy in 2017-2019. During that time, he did occasional odd and end jobs, but he never earned a taxable wage, and he did not file taxes. Mr. Snow has experience and training in carpentry, plumbing, general home repair and maintenance and general engine repair.

In January 2020 a friend recommended him to Ms. Valerie Goodwin. The friend knew Ms. Goodwin was looking for someone to hire as the onsite handyman for an in-home care and behavioral services business that she had just started. In January of 2020 Ms. Goodwin offered Mr. Snow the job of doing delayed maintenance and other odd jobs at her clients' homes. The kind of work he was hired to do was install handicap ramps, fix plumbing and roof leaks, and other maintenance/construction jobs as needed. He was to be paid \$20.00-\$25.00 an hour. The format of the job was that Ms. Goodwin would determine when he worked, what project he worked on and where he worked. Since he would be going into the homes of her vulnerable clients she also had to be there when he worked. He was set to begin work on April 5, 2020. She told him that he would be working part-time and increase that to full time if her clients needed more done.²

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—

____***

(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;

UIPL 16-20_Attachment 1. Issued by USDOL April 2, 2020

g) 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. For example:

* * *

An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.

UIPL 16-20 Issued by USDOL April 5, 2020

C (1) For purposes of PUA coverage, an individual “lacking sufficient work history” means an individual (1) with a recent attachment to the labor force (2) who does not have sufficient wages in covered employment during the last 18 months to establish a claim under regular UC, and (3) who became unemployed or partially unemployed because of one of the COVID-19 related reasons identified under Section 2102. Demonstration of a recent attachment to the labor force for PUA coverage purposes also includes individuals who had a bona fide offer to start working on a specific date and were unable to start due to one of the COVID-19 related reasons identified under Section 2102.

C(1)(g) 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. For example: • An individual is unable to reach his or her job because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of the coronavirus or the employer has closed the place of employment. • An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.

APPLICATION

Mr. Snow is not eligible for PUA benefits as a self-employed individual as it is defined in The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 (3)(I)(kk). Mr. Snow

did not have a sufficient attachment to the labor force through his pattern of odd jobs and erratic work in 2017-2019. Mr. Snow is, however, eligible for PUA benefits under The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 (3)(I)(gg) which applies to individuals who were hired for a job, but the job did not commence due to Covid-19 issues.

In order to establish that Mr. Snow is eligible to be a covered individual under section (gg) of the Alaska Cares Act of 2020, the facts have to support a finding that he had been attached to the labor force at the time that Covid-19 factors resulted in him being laid off or fired from a job.³ A person can prove that they were attached to the labor market, even if they were not actually working at the time of the Covid-19 event, if they had been given, and accepted a firm offer to begin employment at a future, set time.⁴ However, if the person was only given a contingent offer, subject to future finalization, then, that hope of a future job does not establish the kind of attachment to the labor market required by the Cares Act.

The documentary and testimonial evidence supports Mr. Stone's claim that he'd received a firm offer to begin work, and that the work would be at time, and locations set by his employer.

The Division determined that Mr. Snow did not have a firm offer to begin work because it determined that Ms. Goodwin was either not running a business, or that she did all of the work herself⁵ and thus, it determined that her job offered was not valid.⁶ The Division's conclusion is not supported by the evidence. The fact that Ms. Goodwin's business did not advertise online or have a Google presence is not conclusive that a business does not exist. For example, if a person has clients through an established stream of referrals, having a presence in Google is of little benefit. Similarly, the Division noted that Ms. Goodwin was collecting PUA/UI benefits herself. That alone would not prove that a person wasn't also running a business. Mr. Snow provided the Division with a letter from Ms. Goodwin stating that she had offered him a job, and then had to rescind it due to Covid-19.⁷ That letter had a mailing address, a physical address, an email address and a phone number; nothing in Exhibit 1 shows that the Division made any effort to reach Ms. Goodwin.

Ms. Goodwin is a social worker, certified through the NPI process⁸ Ms. Goodwin is on the NPI registry with her area of work identified as social worker. Her registration

³. UIPL 16-20 Issued by USDOL April 5, 2020 (C)(1).

⁴. UIPL 16-20 Issued by USDOL April 5, 2020 (C)(1)(g).

⁵. The Division thought that Mr. Snow was being hired to do house cleaning, and that Ms. Goodwin's job was house cleaning. Exhibit 1:Page 15. "The 'nature' of this business appears to be house cleaning-a sole act..".

⁶. Exhibit 1:Page 15.

⁷. Exhibit 1:Page 12.

⁸. The NPI is a Health Insurance Portability and Accountability Act (HIPAA) Administrative Standard. An NPI is a unique identification number for covered health care providers, created to improve the efficiency and effectiveness of electronic transmission of health information. Covered health care providers, all health plans, and health care

number is: [npiprofile.com/npi/1730548785](https://www.npiprofile.com/npi/1730548785). This information is consistent with the business of offering in home care and behavioral services to vulnerable adults.

In December 2019 Ms. Goodwin had begun Elizabeth Enterprises to provide in home care, and behavioral intervention to residents in the Mat-Su Valley. She had clients by January 2020 when she offered Mr. Snow the position.

Exhibit A, and her earlier letter to the Division⁹, confirm that, as the owner of Elizabeth Enterprises, she had hired him to start working for Elizabeth Enterprises. She confirmed that there was a clear job offer, and acceptance and a firm start date. She also confirmed that that the Covid-19 closures and health emergency resulted in her rescinding her offer of employment.

Ms. Goodwin explained the hiring timeframe, and her expectations in Exhibit A.

“My name is Valerie Goodwin. I am the owner/operator of Elizabeth Enterprises, a home services company I began in December 2019. Troy Snow has done some work for me personally in the past both on my vehicles and at my home.

After seeing his quality of work and great work ethic, I offered him a position with Elizabeth Enterprises as a handy man, per say. This position was going to be on an as needed basis depending on what my clients needs were. His compensation was also dependent upon the duties performed but to be no less than \$20 per hour or a flat rate of \$500 per job, again depending on how the client was billed.

This position was offered to Troy in January 2020, with an official start date of April 5th, 2020. I discussed this again with Troy on April 1st, 2020, to make sure he was still interested and available. Unfortunately, the client postponed the project because of the pandemic, without an exact date rescheduled.”

Ms. Goodwin also confirmed that she has not been able to offer him his job back, but she remains hopeful that she can do so.

I have continued to stay in contact with Troy in hopes that he will still be available and interested when I get back to a point where I can offer him employment again.

As of now, I am operating the business more like a side hustle until I can rebuild my clientele and contracts. It's been a slow process but I am confident that I will get there in due time. Troy is going to be my first call when I am looking to hire help again.¹⁰

clearinghouses must use NPIs in their administrative and financial transactions. <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/NPI-What-You-Need-To-Know.pdf>

⁹. Exhibit 1: Page 12.

¹⁰. Exhibit A.

It is also this tribunal's finding that the offer was then withdrawn due to Covid-19 emergency health issues. The business model was for Ms. Goodwin to go into client's homes and provide personal care, and behavioral services. Mr. Snow's part of the business was to do repairs she identified as needed for the clients' health and safety. Once the statewide health closures and warnings were issued the business lost its client base as a direct result of the clients' need to avoid exposure to Covid-19. Mr. Snow testified that he regularly checks in with Ms. Goodwin but she has not yet resumed her business to the point that she can hire him.

Thus, the documentary and testimonial evidence from the October 20, 2021 hearing establishes that Mr. Snow was a covered individual under The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 (3)(I)(gg). He was affected by Covid-19 on April 5, 2021 which is the date that he had been scheduled to begin work. His testimony and Exhibit A show that he has not been called back since that date.

There is also an issue regarding Mr. Snow's obligation to provide the documentary evidence required by the Continued Assistance Act¹¹, in order for his benefits to continue past the week ending January 2, 2021 through to September 4, 2021. Because the Division deemed him ineligible for all PUA benefits, this issue was not addressed in its July 14, 2021 determination.

It is reasonable, therefore, to afford Mr. Snow an opportunity to provide the Division qualifying documentation. If he then fails to do so, his eligibility for PUA benefits will end the week ending December 26, 2020.

DECISION

It is the determination of this tribunal that Mr. Snow fits the definition of a covered individual pursuant to The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance. The Division's determination in Notice ID L001395129 is **REVERSED**. Mr. Snow is eligible for PUA benefits from the week ending April 11, 2020 through to the week ending December 26, 2020. The issue of his non-compliance with the Continued Cares Act's reporting requirements prohibits him from receiving benefits after the week ending December 26, 2020 is **REMANDED**. The Division shall determine if Mr. Snow is in compliance, and if not, it shall give Mr. Snow a reasonable period in which to provide necessary documents. **Jurisdiction is not retained, and any future decision will have new, separate appeal rights.**

Dated: November 18, 2021,



Karla F. Huntington
Administrative Law Judge

¹¹. Continued Assistance Act, Public Law (Pub. L) 116-26.

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.

NOTICE REGARDING POSSIBLE WAIVER OF REPAYMENT BENEFITS

If the division continues to seek recovery of previously paid benefits after this decision Mr. Snow 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. Snow 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. Snow can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

CERTIFICATE OF SERVICE

I certify that on November 18, 2021, the foregoing decision was served on Troy Snow (by mail & email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

Office of Administrative Hearings