

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

In the Matter of)
)
JULIA JAMES) OAH No. 21-0085-PUA
) Agency No. P20 244
_____)

APPEAL DECISION

Docket Number: P20 244

Hearing Date: February 18, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Julia James

None

CASE HISTORY

The claimant, Julia James, timely appealed a September 29, 2020 determination 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 or about January 28, 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 February 18, 2021. Ms. James 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

Ms. James established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 21, 2020. The Division determined that the claimant was not eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program.

Prior to the pandemic, Ms. James had seasonal work in a tourist shop in Juneau operated by Timberwolf Ventures. Her work in the 2019 cruise ship season ended on October 5, 2019, when the shop closed for the season. She had a reasonable expectation of working for Timberwolf Ventures in the 2020 cruise ship season. There was no formal offer of employment with a start date, but that is consistent with the

nature of seasonal work of this kind, where work arrangements are often made shortly before the season begins. As a direct result of COVID-19, the 2020 cruise ship season did not occur, and most shops dependent on cruise ship business did not open, nor did they make final arrangements to staff up for opening.

Ms. James had adequate resources for child care had she been able to work.

With no opportunity to return to the tourist shop work, Ms. James applied for other positions but was unsuccessful.

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;

* * *

(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; . . .

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

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 one of a list of reasons related to the COVID-19 pandemic. It appears to be undisputed that the claimant’s history of seasonal work did not represent employment that would qualify her for a claim for regular unemployment benefits in 2020.

The proper handling of seasonal workers under the PUA program is an area where there is some legal uncertainty. Guidance from the US Department of Labor in UIPL 16-20 Change 2, above, holds that independent contractor who experiences a significant reduction in work as a direct result of the pandemic may be considered a covered individual. A seasonal worker in the tourist industry in a port city is analogous to a gig worker who has suffered a loss of demand for services. For someone with a history of working the tourist season, a specific job offer is not required to demonstrate that the person would, more likely than not, have worked the upcoming season. This means that the complete collapse of the tourist economy as a result of COVID-19 is a proximate cause of that worker’s unemployment during the 2020 season.

In *In re Corjulo*, No. P20-120 (Dec. 3, 2020), the Department’s Appeal Tribunal addressed a somewhat similar issue. Mr. Corjulo had a history of working summer fishing jobs in Alaska. He would not normally—and did not in 2020—have a specific job offer in advance; he would simply go to the port and be hired each season. The Appeal Tribunal appeared willing to accept that this pattern would create a sufficiently firm expectation of employment to support PUA benefits. In Mr. Corjulo’s particular

case, he still did not qualify because he had never gone to the port in 2020; his failure to get work was not because the work was unavailable (it was), but because he elected not to travel for a variety of reasons, including temporary quarantines, the bankruptcy of an airline, and concerns about catching COVID-19. But Ms. James is different: she *was* in the place where the seasonal work would normally be available, but in her case the work was *not* available in 2020, and this was true solely due to the pandemic. Thus, according to the reasoning (if not the holding) of *Corjulo*, she would appear to be eligible.


The point in the ramp-up to the cruise ship season at which Ms. James could have expected to be picked up by her employer is somewhat uncertain. The season normally gains momentum through the month of May, and mid-month has been selected as the tipping point at which it became more likely than not that Ms. James could have gone to work.

The Tribunal finds the claimant meets the definition of a covered individual beginning the week ending May 23, 2020. She ceased being a covered individual on this basis at the end of the normal cruise ship season in Juneau, which is approximately October 3, 2020.

DECISION

The determination issued on September 29, 2020 is **AFFIRMED** with respect to the period prior to and including the week ending May 16, 2020 but is **REVERSED** for the period thereafter. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending May 23, 2020 and continuing through the week ending October 3, 2020.

Dated: February 23, 2021


Christopher Kennedy
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 February 23, 2021 the foregoing decision was served on Julia James (by mail by email to [REDACTED]). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

[REDACTED] _____
Office of Administrative Hearings