

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

In the Matter of )  
 )  
VELVET ANN BEISWENGER ) OAH No. 21-0143-PUA  
 ) Agency No. P20 279  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P20 279

**Hearing Date:** March 3, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Velvet Ann Beiswenger

None

**CASE HISTORY**

The claimant, Velvet Beiswenger, timely appealed an October 8, 2020 determination (recorded in an October 9 letter) 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 29, 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 March 3, 2021. Ms. Beiswenger 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. Beiswenger established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 28, 2020. The Division made a variety of determinations of her claim,<sup>1</sup> but ultimately determined that the claimant was not

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<sup>1</sup> Some of these related to failure to file quarterly test claims, an issue that would be resolved outside the context of this appeal (Ms. Beiswenger seems to have resolved it). Others, including an eligibility finding as late as October 6, related to underlying eligibility and are superseded by the October 8 determination. A third group of notices adjusted the amount of benefits Ms. Beiswenger might receive, if eligible. Ms. Beiswenger submitted all of the notices for inclusion in the record.

eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program.

Ms. Beiswenger has substantial experience in customer service in the entertainment area, including bingo. In 2019, she got a job with Golden Wheel Amusements selling ride tickets at the Alaska State Fair. She worked the whole duration of that fair.

The way fair employment works, workers are hired fresh for each event, and the official duration of each job is the duration of that event. However, Golden Wheel will rehire any worker who has a good record and passes a new drug test. Ms. Beiswenger worked the next Golden Wheel event, the 2020 Fur Rondy, from beginning to end, finishing that job on March 8, 2020. The next events of the fair season were to be in Kodiak, Homer, and Soldotna, with Kodiak Crab Festival in the third week of May to be the first of these. Ms. Beiswenger expected to work these and the other summer events on the schedule and was assured that she could be hired with a negative drug test. The final event of the season is normally (but not always) the State Fair, which ends in early September.

In 2020, however, all of these events but one were canceled as a direct result of COVID-19. The one event that took place was the Hometown Jamboree held on the fairgrounds from August 8-23, 2020. Golden Wheel did hire Ms. Beiswenger for the entirety of that event.

No events have occurred since. Ms. Beiswenger checked in with Golden Wheel prior to the Fur Rondy dates for 2021, but learned that the part of Fur Rondy operated by Golden Wheel (the rides) has been canceled.

Ms. Beiswenger has not been successful in finding other work.

#### **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 event-by-event work did not represent employment that would qualify her for a claim for regular unemployment benefits in 2020.

The proper handling of seasonal or event 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 event worker in the amusement fair industry is analogous to a gig worker who has suffered a loss of demand for services. For someone with a history of working the event season, a specific job offer is not required to demonstrate that the person would, more likely than not, have worked the upcoming events. This means that the almost complete closure of fairs 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. Beiswenger is different: she *was* in or close to 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.<sup>2</sup>

Ms. Beiswenger could have expected to work a series of events beginning the week ending May 23, 2020 and ending the week ending September 12, 2020. However, because she had full weeks of event work the weeks of August 15 and 22, 2020, she did not have any COVID-19-related loss in those two weeks.

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 fair season, which was the week ending September 12, 2020. She had no COVID-related loss in the two August weeks mentioned above.

### **DECISION**

The determination issued on October 9, 2020 is **REVERSED** for two periods: (1) the period from the week ending May 23, 2020 to the week ending August 8, 2020, inclusive;

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<sup>2</sup> A similar conclusion was reached in *In re James*, No. P20-244 (Feb. 23, 2021).

and (2) the period from the week ending August 29, 2020 through the week ending September 12, 2020, inclusive. It is **AFFIRMED** with respect to all other weeks in 2020.

Dated: March 4, 2021

[REDACTED]

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 March 4, 2021 the foregoing decision was served on Velvet Beiswenger (by mail by email to [REDACTED]). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

[REDACTED]

Office of Administrative Hearings