

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

In the Matter of	)	
	)	
EVELYN WIDMYER	)	OAH No. 21-0145-PUA
_____	)	Agency No. P20 282

**APPEAL DECISION**

**Docket Number:** P20 282

**Hearing Date:** April 7, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Evelyn Widmyer  
Bret Denbeck (witness)  
Gina Zuiderduin (witness)

None

**CASE HISTORY**

The claimant, Evelyn Widmyer, timely appealed a September 9, 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 January 28, 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 April 7, 2021. The Division of Employment and Training Services (DETS) provided written materials but was not a live participant. Ms. Widmyer testified under oath, as did witnesses Bret Denbeck and Gina Zuiderduin. Ms. Widmyer also submitted 41 pages that summarized her case, documented her income history, and addressed childcare issues.

The issue before the ALJ is whether the claimant is a covered individual as defined by the Act and therefore eligible for PUA benefits.

**FINDINGS OF FACT**

Ms. Widmyer established a claim for PUA benefits effective the week ending March 21, 2020. The Department of Labor and Workforce Development determined that she was not eligible for regular unemployment benefits because she did not have recent wages in covered employment on which to base a claim. On September 9, 2020, it

determined that she was not eligible for pandemic unemployment assistance because she was not impacted by COVID-19 in a manner that made her a covered individual.

For many years, the claimant has worked seasonally as an independent contractor. Starting in 2016 or 2017, she worked with Bret Denbeck in his landscaping and hardscaping business. Mr. Denbeck designs and builds gardens, patios, walkways, and other landscaping features. His business also maintains landscaped areas. Every season, he has many clients who schedule recurring maintenance work, including Homeowner's Associations, businesses, and private citizens. The season for this work typically runs from April through October, which includes fall clean-up work.

The claimant worked steadily as a contractor to Mr. Denbeck's business in 2016 and/or 2017. Since 2018, she has continued working for him in a less regular, day laborer capacity. She focused most of her seasonal work on commercial fishing. She also worked for a construction company called Stick and Stone Construction LLC.

In 2019, the claimant earned income from construction with Stick and Stone and from deckhand work in the commercial salmon fishery. She also earned income from selling her CFEC shrimp permit and gear. She worked at least several days as a laborer for Mr. Denbeck, who paid her in-kind by things like loaning her a truck when needed for her personal use.

Through her work with Mr. Denbeck, the claimant developed an interest and expertise in maintaining established gardens, the part of the landscaping business Mr. Denbeck enjoys the least and normally has little time for. During the summer of 2019, he suggested that the claimant could work with him starting in 2020 and he would help her take over much of the maintenance work he had been doing. The ultimate goal was for the claimant to develop a separate business that would work hand-in-hand with Mr. Denbeck's. He would design and build garden areas, and then direct clients needing ongoing maintenance to Ms. Widmyer's business.

In early 2020, the precise mechanism for achieving this goal was still uncertain. That would have resolved as the 2020 season got started and client preferences became known. Mr. Denbeck was flexible about how he and Ms. Widmyer would achieve the goal, but he was clear that he planned to work closely with her during the 2020 season. If she could not start in 2020 as an independent business because she needed to develop relationships with his clients, he agreed he would hire her as a contractor to his business until the time was right. In this plan, Ms. Widmyer would either work for Mr. Denbeck directly, or her new business would start with him as its one client who promised to supply steady jobs for the season.

In January 2020, the claimant confirmed with Mr. Denbeck that she would work with him during the upcoming season starting in April. By March 2020, however, many of Mr. Denbeck's regular clients for garden maintenance work were expressing concerns about COVID-19 and scaling back their summer plans. He lost more than 50% of his

clients because of the pandemic, both for maintenance work and for new landscaping projects.

Due to the pandemic, Mr. Denbeck had insufficient work himself. He began taking on other kinds of work to get by. He informed the claimant he was not able to work with her in any capacity since most of his regular clients had cancelled their jobs. As of result, the claimant had no landscaping or garden maintenance work in 2020.

Ms. Widmyer was caring for her pre-school-aged niece throughout 2020 and recently became the child's legal guardian. Childcare problems did not prevent her from working in 2020. The claimant had childcare in place that would have allowed her to work if she had had employment.

### **STATUTORY PROVISIONS**

#### **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).

## **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 of one or more listed reasons related to the COVID-19 pandemic. There is no dispute that the claimant is not eligible for regular unemployment compensation benefits.

The claimant asserts she was affected by the pandemic because her employment with Bret Denbeck was retracted as a direct result of the COVID-19 pandemic.

The claimant showed that she planned to start her own business to eventually take over Mr. Denbeck's garden maintenance work. If that plan required time to develop, as she and Mr. Denbeck recognized it might, they agreed she would start by working for him for the 2020 season. All parts of this plan were cancelled as a direct result of the COVID-19 pandemic.

In processing this claim, the Department of Labor and Workforce Development was not aware of the full context of the claimant's work situation. It understood she was starting a new business and was unable to attract clients in 2020. It concluded that there is no PUA eligibility based on an inability to find work when businesses were not hiring due to COVID-19.

Through the hearing process, the claimant showed that her situation should be viewed as one in which scheduled employment was withdrawn as a direct result of the pandemic. Mr. Denbeck testified that he agreed to refer his existing maintenance clients to the claimant, thereby becoming her one client - who promised steady work for the season. If for any reason Ms. Widmyer could not take over the maintenance work independently, he and Ms. Widmyer had already agreed she would do the same work as his contractor. This was functionally a bona fide and reliable job offer with a specific start and end date.

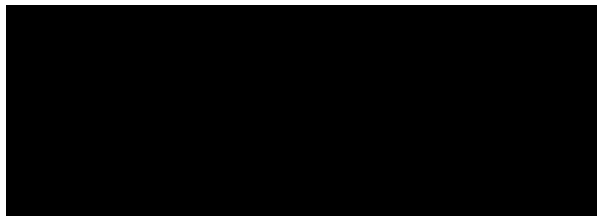
Absent the COVID-19 pandemic, Ms. Widmyer would have worked with Mr. Denbeck from mid-April through October. The opportunity was withdrawn only because Mr. Denbeck's business was severely impacted by the pandemic. This satisfies the PUA eligibility provision for retracted employment.

The claimant meets the definition of a covered individual starting the week ending April 18, 2020 and continuing through the week ending October 31, 2020.

### **DECISION**

The determination issued on September 9, 2020 is **MODIFIED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program, effective the week ending April 18, 2020 through the week ending October 31, 2020.

Dated: April 8, 2021



### **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 April 8, 2021 the foregoing decision was served on Evelyn Widmyer (by mail and email to [REDACTED]). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

[REDACTED]  
Office of Administrative Hearings