

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

In the Matter of)
)
TERYN (SIMPSON) BURNETT¹) OAH No. 21-0116-PUA
) Agency No. P20 351
_____)

APPEAL DECISION

Docket Number: P20 351

Hearing Date: April 9, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Teryn Burnett

None

CASE HISTORY

The claimant, Teryn Burnett, appealed a September 30, 2020 determination that 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 recorded hearing took place on April 9, 2021. The Division of Employment and Training Services (DETS) provided written materials but was not a live participant. Ms. Burnett testified under oath. The record remained open until April 16, 2021, so she could submit additional evidence of her 2019 income and housecleaning work schedule. She did not do so.

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

FINDINGS OF FACT

Ms. Burnett established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 7, 2020. The Division initially determined that she was eligible. On September 20, 2020, it redetermined the case and found she was not eligible. Ms. Burnett appealed.

On February 8, 2021, while the appeal was pending, the Department issued two redetermination letters in Ms. Burnett's case. The Department clarified during the

¹ The Department of Labor and Workforce Development file identifies the claimant as Teryn Simpson. She clarified that she legally changed her name around 2009 to Burnett. This decision therefore refers to her as Teryn Burnett.

hearing that it found the claimant eligible for PUA benefits from the week ending June 20, 2020 through the week ending October 3, 2020. It denied eligibility for the weeks before and after this period.

Because of the February 2021 redeterminations, the only weeks at issue in this appeal are:

- (1) the week ending March 7th through the week ending June 13, 2020; and
- (2) the week ending October 10, 2020 and ongoing.

For the last several years, the claimant has worked as an independent contractor cleaning houses. In 2019, she worked for two businesses, a property management firm called Seward Properties and a short-term vacation rental operated by Karl Mechtenberg.

The claimant's work schedule was not consistent. The vast majority of her work took place during the summer season. She worked when called in by either business. During the hearing, the claimant seemed to exaggerate her work schedule and income significantly. She estimated she worked 10-12 days per month for Seward Properties during the summer season, and approximately 8 days per month in the other months. She earned \$20 per hour and worked three to four hours per cleaning. She was paid by check.

Despite her claim of year-round work, her 2019 Schedule C tax form shows \$628 as her gross revenue from Seward Properties. This translates to a total of 31 hours of work – or perhaps 10 work days for Seward Properties over the full year.

The Department interviewed an administrator from Seward Properties, who reported that cleaning work had dropped off because of the pandemic. The claimant's last day worked was in April 2020. The administrator reported trying to contact the claimant in July 2020 for work, but she could not get through. The claimant disputes that anyone from Seward Properties reached out to her with additional work after April 2020.

The claimant was paid cash for cleaning at Mr. Mechtenberg's business. She kept no records. She earned \$80 per cleaning, which is not reflected on her 2019 Schedule C tax form. She estimated earning at least \$1,000 from this job in 2019, 95% of which was during the summer months.

Mr. Mechtenberg reported that the claimant cleaned seasonally only, about twice per week. He agreed that business had dropped off due to COVID-19 and he needed her less than usual. The claimant's last workday was July 14, 2020.

The claimant has continued to look for work since her housekeeping ended in July 2020, but so far without success.

Ms. Burnett has two children, ages 16 and 12. During the spring 2020 semester, they attended public school in Seward. The school closed to in-person learning after the spring break. According to the 2019-2020 school calendar, which is publicly available online, March 16, 2020 was the first day of online schooling. The school year ended on May 15, 2020.

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—

* * *

(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;

* * *

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section;

Unemployment Insurance Program Letter (UIPL) 16-20, Change 2 Issued by U.S. Department of Labor on 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 other State or Federal program and who is unemployed or partially unemployed because of one or more listed reasons related to the COVID-19 pandemic.

The claimant has not recently worked in covered employment that would qualify her for a claim for regular or other unemployment benefits.

The claimant asserted that she was impacted by the pandemic from March 7 through June 13, 2020, because she was unable to work while her children’s schools were closed and because business demand for cleaning dropped significantly due to COVID-19. Starting the week of October 10, 2020 and ongoing, she asserted that business demand for her cleaning services dropped significantly due to COVID-19.

The claimant’s cleaning business was a seasonal operation. She may have had occasional work outside that time, but it was not significant. The record remained open after the hearing so the claimant could submit additional evidence showing that she worked outside the summer months. She planned to submit cancelled checks from Seward Properties or a calendar kept by Mr. Mechtenberg. Nothing was received by the deadline.

The Division recognized the seasonal nature of the claimant’s work by finding her eligible for PUA from the week ending June 20 through the week ending October 3, 2020. The summer season normally begins in mid-May, so the claimant should be considered a covered individual starting the week ending May 23, 2020. There is insufficient evidence to conclude that her normal work was impacted by the pandemic in other weeks, or that she was unable to work because her children’s schools were closed in the spring of 2020.

DECISION

The determination issued on September 30, 2020 – as adjusted by the redeterminations issued on February 8, 2021 - is **MODIFIED**. The claimant is eligible for pandemic unemployment assistance benefits from the week ending May 23, 2020 through the week ending October 3, 2020. The denial determinations for the weeks before and after this period are otherwise **AFFIRMED**.

Dated: April 19, 2021

Signed

For: Kathryn Swiderski
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 April 19, 2021 the foregoing decision was served on Teryn Burnett (by mail and email). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

Signed

Office of Administrative Hearings