

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

In the Matter of )  
)  
EVA WESLEY ) OAH No. 21-0560-PUA  
\_\_\_\_\_ ) Agency No. P20 480

**APPEAL DECISION**

**Docket Number:** P20 480

**Hearing Date:** April 26, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Eva Wesley

None

**CASE HISTORY**

The claimant, Eva Wesley, timely appealed on December 2, 2020 determination (recorded in December 3 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 in March 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 April 26, 2021. Ms. Wesley 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**

Eva Wesley established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 7, 2020. The Division paid benefits for a time but ultimately 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.

Ms. Wesley lives in the village of Noatak. She is mostly a stay-at-home mother. In the past, she has done odd jobs for the Noatak IRA Council, but she reports that the last work she did for them was in the summer of 2019 and she does not report any pattern of employment with them. More regularly, she has annually assisted with inventory

for the Noatak Native Store. This work takes about a week every June (not necessarily all falling in a single calendar week).

In 2020, the Native Store inventory was canceled as a direct result of COVID-19. Ms. Wesley has not been successful in finding other work.

DETS paid benefits to Ms. Wesley for a much larger portion of 2020 than the period covered by her lost inventory job. In December, however, DETS re-determined Ms. Wesley's case and found her ineligible from the beginning of the program forward. She was reportedly told she would have to repay about \$19,000. It is not clear whether there was formal written notice to repay—then or at a later time—or whether Ms. Wesley has been informed of the opportunity to seek a waiver, the opportunity for a hearing, and any other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.b.

### **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 casual labor 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 inventory worker who is hired by a store each June is analogous to a gig worker who has suffered a loss of demand for services. For someone with a history of working the same annual job, a specific job offer is not required to demonstrate that the person would, more likely than not, have worked the upcoming occasion as well. This means that the suspension of the inventory work in the summer of 2020 as a result of COVID-19 is a proximate cause of that Ms. Wesley’s unemployment during the brief, but regular, span of time when that work is normally done.

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. Wesley 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>1</sup>

The Tribunal finds the claimant meets the definition of a covered individual beginning the week ending June 13, 2020 and ending the week ending June 20, 2020. She is not a covered individual for any other period.

Ms. Wesley was erroneously paid benefits for a much longer period, which the Division now seeks to recoup. The reason for the overpayment appears to be agency error.

In sum, Ms. Wesley has been ineligible for PUA benefits for most of the period during which they were paid to her. It is possible, however, that she could qualify for a waiver from recoupment or, if a waiver were not granted, that she must be afforded an appeal hearing in which such matters as estoppel could be explored. The present referral does not encompass these issues, and the present decision does not decide them for or against Ms. Wesley.

*The Division has advised that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available, Ms. Wesley can call the BPC at 907-465-2863, 1-888-810-6789, or email to [jnu.bpc@alaska.gov](mailto:jnu.bpc@alaska.gov).*

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<sup>1</sup> A similar conclusion was reached in *In re James*, No. P20-244 (Feb. 23, 2021) and *In re Beiswenger*, No. P20-279 (March 4, 2021).

## DECISION

The determination recorded in Letter [REDACTED] is **REVERSED** for the period beginning the week ending June 13, 2020 and ending the week ending June 20, 2020, inclusive. It is **AFFIRMED** with respect to all other weeks in 2020.

Dated: April 27, 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 April 27, 2021 the foregoing decision was served on Eva Wesley (by mail). A copy was emailed to the DETS UI Support Team, UI Tech. Team, and UI Appeals Office.

[REDACTED]  
Office of Administrative Hearings