

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

In the Matter of)
)
SHELLY SWEET) OAH No. 21-0470-PUA
) Agency No. P20 486
_____)

APPEAL DECISION

Docket Number: P20 489

Hearing Date: April 20, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Shelly Sweet

None

CASE HISTORY

The claimant, Shelly Sweet, timely appealed a November 10, 2020 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Division of Employment & Training Services found that the claimant was not eligible for the PUA program starting the week ending February 8, 2020, because she was not impacted by COVID-19 in a manner that made her a “covered individual” as defined by section 2102 of the Act.

The Department of Labor referred the appeal to the Office of Administrative Hearings on March 22, 2021. Under the terms of referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on April 20, 2021. Ms. Sweet 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. Sweet established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 8, 2020. She was not eligible for regular or other unemployment benefits because she did not have wages in covered employment on which to base a claim.

The claimant was self-employed in 2019 primarily cutting beetle-killed spruce trees in the Kenai area and selling firewood, as well as performing snow removal work for clients. She testified at the hearing that she had gross revenues of just under \$8000 from her business during that year. Early in the pandemic, however, the owner of her

leased property where she harvested spruce trees and kept her tools, workshop and truck contracted Covid-19 and died shortly thereafter. His family members then immediately evicted her from the property, on or about March 20, 2020. (Exhibit 1, p. 15.) In addition, she was unable to get former employees to help her with cutting and hauling firewood, as they were quarantining and afraid to come to work. All of these factors, taken together, effectively eliminated her ability to run her firewood business.

The claimant also testified that just prior to the onset of the pandemic, she applied for and was offered a job as a housekeeper/landscaper at the Edgewater Lodge and RV Park in Soldotna. She was scheduled to start work there in April 2020. However, the lodge and RV park business is highly dependent on tourism, and they had to withdraw the job offer to the claimant when travel to Alaska was shut down as a result of the Covid-19 pandemic. The Edgewater general manager wrote a letter on the claimant's behalf and testified at the hearing, and she credibly corroborated the claimant's testimony on these issues.

RELEVANT 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

(ll) 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);

(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).

Unemployment Insurance Program Letter (UIPL) 16-20, Change 2, Issued July 21, 2020, by the U.S. Department of Labor:

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.¹

APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance (PUA) 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 reasons related to the COVID-19 pandemic. It appears undisputed that the claimant’s work history did not qualify her for a claim for regular or other unemployment benefits.

In denying the claimant’s application for PUA benefits, DETS stated that she was “impacted by COVID-19 ... when you were unable to continue leasing your property” but “[y]ou do not have a business license and firewood services were deemed essential by state mandate.” (Exhibit 1, p. 2.) First, a business license is not a prerequisite for PUA eligibility; rather it serves to confirm or corroborate a claimant’s testimony regarding their self-employment activities. In this case, the claimant’s testimony as to her self-employment status prior to the pandemic was credible and consistent. Second, the comment that firewood services were deemed essential by the State of Alaska misses the point regarding the impact of the pandemic on the claimant’s ability to continue to run her firewood business. Third, the DETS denial failed completely to take into account the claimant’s lost opportunity to work for the Edgewater.

The claimant was eligible for PUA benefits, because she incurred a significant diminution of self-employment income as a result of Covid-19. She went from gross income of approximately \$8000 in 2019 to essentially zero in 2020. In addition, she had a firm job offer that she had accepted, with a scheduled start date in early April 2020, but the employer had to withdraw the job offer due to the pandemic. This clearly places the claimant within the eligibility category of a person who was “scheduled to commence employment and does not have a job ... as a direct result of the COVID-19 public health emergency.”

¹ Emphasis added.

DECISION

The determination issued on November 10, 2020 is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance program, effective the week ending March 21, 2020.

Dated: April 26, 2021

Signed

Andrew M. Lebo
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 26, 2021 the foregoing decision was served on Shelly Sweet (by U.S. mail & email); a copy was emailed to the UI Appeals Office for recordkeeping.

Signed

Office of Administrative Hearings