

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

In the Matter of)
)
STEPHANIE NOWAK) OAH No. 21-0534-PUA
) Agency No. P20-541
_____)

APPEAL DECISION

Docket Number: P20-541

Hearing Dates: April 28 & May 7, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Stephanie Nowak

None

CASE HISTORY

The claimant, Stephanie Nowak, appealed an October 5, 2020 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Division of Employment & Training Services found that she was not eligible for the PUA program 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 (OAH) on April 1, 2021. Under the terms of referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. OAH procedures under AS 44.64.060 do not apply.

The matter was heard in a recorded hearing on April 28 and May 13, 2021. Ms. Nowak appeared telephonically and 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. Nowak established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 21, 2020. She was not eligible for regular or other unemployment benefits, because she did not have sufficient wages in covered employment on which to base a claim.

The record is unclear as to the claimant’s employment history prior to 2020. She was not employed at the time of the onset of the COVID-19 pandemic in March 2020. In early summer of 2020, she applied to work for seafood processor Silver Bay Seafoods in Naknek Alaska. She was hired and was scheduled to start work in late July. Silver

Bay procured a plane ticket for the claimant to travel to Naknek on or about July 19, 2020. The claimant testified that she missed the flight because her smartphone had been stolen, so she couldn't access information about her reservation. She further testified that Silver Bay made her a new flight reservation in August, and she made that flight and proceeded to work the last few days of the salmon season for Silver Bay. She submitted a W-2 form from Silver Bay for 2020, corroborating her testimony.

The claimant applied for PUA benefits, and DETS apparently made an initial determination that she was eligible and awarded her benefits for a time. DETS ultimately determined, however, that she 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. In the process of investigating her claim, DETS staff spoke with a payroll specialist at Silver Bay Seafoods, who stated that the claimant was "supposed to start on 7/19 but she never showed up [and] was terminated on 7/20." (Exhibit 1, p. 15.) The discrepancy between this version of events and the fact that the claimant actually did work for Silver Bay in 2020 (as evidenced by her W-2 form) has not been reconciled in the record of this matter.

When DETS provided notice of its determination that the claimant was not eligible for PUA benefits, she was apparently told she would have to repay a significant sum of benefits. It is not clear whether she was ever given a formal written notice to repay, or whether she has ever been informed of the opportunity to seek a waiver of the repayment obligation, or of the opportunity for a hearing regarding the repayment obligation.

DETS's October 5, 2020 letter denying the claimant's eligibility states as follows:

It has been determined that you have not been impacted by COVID-19 reason as of the week ending March 21, 2020 and are therefore not a covered individual. ... You were impacted by COVID-19 as not being able to start a new job with Silverbay Seafoods on August 3, 2020; however, you were unable to start for personal reasons.

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).

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.

The Division’s rationale for finding the claimant ineligible for PUA benefits, as presented in its October 5, 2020 letter to her, appears to be based on the report from Silver Bay that the claimant was terminated after failing to show up for work. The claimant disputed this report, testified that she was not terminated, and presented her W-2 form to show that she did actually work for Silver Bay a bit later in the summer 2020 season. This factual discrepancy has not been resolved on the record presented. Under either factual scenario, however, the claimant’s ineligibility for PUA benefits is clear.

It is undisputed that the claimant never lost a job or job offer in Alaska as a result of the COVID-19 pandemic. To be eligible for PUA benefits, a person must be able to show that the pandemic caused them to lose a job or a contracted-for job opportunity. Each of the eligibility categories set forth in the CARES Act and listed above describes a scenario where the pandemic caused a person to lose a job, required them to quit a job, or made them unable to get to their place of work, and variations of that theme. Here, the claimant has not argued, through her testimony or documentary evidence, that the pandemic caused her to lose a job, to be unable to reach a jobsite, to work and earn less than she would have in the absence of the pandemic, or to not be able to start work after an agreed-upon job offer. She simply has not worked very much during the pandemic, and at most she might argue that her ability to find work has been hampered by conditions related to the pandemic. That type of impact does not satisfy the criteria for PUA eligibility under the CARES Act. Based on the foregoing discussion, the claimant was not eligible for PUA benefits.

It is possible that in the near future the claimant may be faced with an effort by the Department of Labor to recoup the overpaid PUA benefits that she received in 2020. The claimant, however, may qualify for a waiver from recoupment or, if a waiver is not granted, she must at least be afforded an appeal hearing in which such matters as

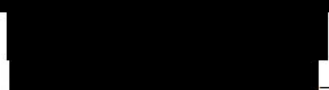
estoppel could be explored.¹ The present referral does not encompass these issues, and the present decision does not decide them for or against the claimant.

The Division has advised OAH 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. Nowak can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

DECISION

The determination issued on October 5, 2020 is **AFFIRMED**.

Dated: May 22, 2021



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 May 24, 2021 the foregoing decision was served on Stephanie Nowak (by U.S. mail & email); a courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeal Team.


Office of Administrative Hearings

¹ When DETS seeks repayment, the claimant must be informed of the opportunity to seek a waiver excusing her from repayment, the opportunity for a hearing on that issue, and any other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.b.