

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

In the Matter of)
)
LISETTE ABIGAIL V PARAIISO) OAH No. 21-0611-PUA
) Agency No. P20-559
_____)

APPEAL DECISION

Docket Number: P20 559

Hearing Date: May 5, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Lisette Paraiso, Jeremiah Paraiso

None

CASE HISTORY

The claimant, Lisette Paraiso, timely appealed a December 9, 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 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 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. AS 44.64.060 procedures do not apply.

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

FINDINGS OF FACT

Ms. Paraiso 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 sufficient wages in covered employment on which to base a claim.

Prior to the period relevant to her PUA claim, the claimant decided to become a real estate agent in early 2019, undertook the required training, and then became licensed in July 2019. She completed one transaction in 2019 as an agent but was not paid for that deal until early 2020. She testified under oath that at the beginning of 2020 she was self-employed as a real estate agent but was part of a team, AK Realty Experts, until she was “fired” from the team in March based on performance issues unrelated to the pandemic. She then continued to try to earn a living as an agent independent of the team, but due to pandemic-related issues she was unable to get listings and

make a living. She testified that as a direct result of the pandemic, she had zero income from real estate transactions for the remainder of 2020. Thus, her expenses associated with starting up her real estate business far exceeded her income. She believes that but for the loss of opportunity to build a base of clients due to the COVID 19 pandemic, she would have been able to earn significant income in 2020.

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. When DETS provided notice of this determination, the claimant was apparently told she would have to repay a significant sum of the overpaid 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.

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 2020.

As mentioned above, initially DETS apparently found the claimant eligible for PUA benefits, she was paid a significant amount of benefits, then she was informed by DETS that it had determined she was actually not eligible for PUA. The question presented here is whether or not the Division’s decision to reverse its eligibility determination was correct.

The claimant argues that she was prevented from developing her real estate business by restrictions imposed upon her due to the COVID 19 pandemic. Even where there has not been a formal suspension of services in a self-employed claimant’s industry, the claimant can be eligible for PUA benefits if they suffered a “significant diminution of work as a result of COVID-19.”

The challenge for the claimant in this case, however, is that she did not have an established real estate business with a history of pre-pandemic income. She completed one transaction in late 2019, prior to the pandemic, for which she was paid in early 2020. A single transaction is an insufficient basis for confirming a pattern of income that was impaired by the pandemic. Under such circumstances, it cannot be said that the claimant suffered a diminution or reduction of income, because such a concept assumes the existence of an established history of income that has been impacted by the pandemic.

Based on the foregoing discussion, the claimant was not eligible for PUA benefits.

¹ Emphasis added.


It is possible that in the near future the claimant may be faced with an effort by the Department of Labor to recoup the significant amount of 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.² 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. Paraiso can call the BPC at 907 465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

DECISION

The determination issued on December 9, 2020 is **AFFIRMED**.

Dated: May 24, 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 Lisette Paraiso (by email & U.S. mail); a courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeal Team |


Office of Administrative Hearings

² 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.