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

In the Matter of	)	
	)	
BRITTANY MARIE WARD	)	OAH No. 21-0189-PUA
	)	Agency No. P20 597
	)	

APPEAL DECISION

Docket Number: P20 597   **Hearing Date:** March 17, 2021

CLAIMANT APPEARANCES: **DETS APPEARANCES:**

Brittany Ward   None

CASE HISTORY

The claimant, Brittany Ward, submitted an appeal of an October 16, 2020 determination[1] 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 on January 29, 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 March 16, 2021. Ms. Ward 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. Ward established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 14, 2020. The Division 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. Ward's last regular employment was in 2018, working for Wendy's. After that, there was a period of incarceration and the loss of a driver's license, which made it

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[1]   The decision was made and appealed on October 16, but the written notice was dated October 19.

difficult to work even after she was released. In the winter of 2019-20 she did about five days of snow shoveling as a day laborer. She also had a 3-4 day one-time job helping a friend clean out his place. She was looking for regular work, and just before the pandemic closures began she had an excellent lead on a waitressing job. However, she had not had a chance to apply for it before the restaurant began laying people off due to COVID-19.

Ms. Ward has not been able to find work since the pandemic started.

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;

* * *

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

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k. The individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

■ The Secretary has determined that, in addition to individuals who qualify for benefits under the other criteria described above, an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities. . . . [italics added]
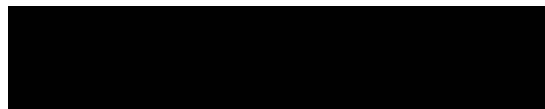
APPLICATION

COVID-19 has undoubtedly made things more difficult for Ms. Ward. She was trying to get back into waitressing and her best job prospect disappeared as a result of the pandemic, before she could apply. She probably would have tried to get odd jobs, but the pandemic has likely made the climate for getting odd jobs more difficult in her community.

However, Ms. Ward's PUA claim cannot be sustained. Her interest in the waitressing job had not progressed to the point of being "scheduled to commence employment," and so she does not qualify under paragraph (gg), quoted above. Insofar as she worked as an independent contractor, she would need to show that she suffered a "significant diminution" of work and income. In Ms. Ward's case, the income was minimal—essentially, a few days of snow shoveling—and in any event there is no evidence that outdoor snow shoveling was affected by the pandemic. While her future employment prospects in general may have been diminished by the existence of a pandemic, there was no firm or established source of income that the pandemic impaired. In these circumstances, the CARES Act does not provide benefits.

DECISION

The determination rendered on October 16, 2020 and noticed on October 19, 2021 is **AFFIRMED**.

Dated: March 17, 2021

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 March 18, 2021 the foregoing decision was served on Brittany Ward (by mail and by email to ████████████████████████). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

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Office of Administrative Hearings