

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

In the Matter of)
)
HEATHER DOISHER) OAH No. 21-0599-PUA
) Agency No. P20 604
_____)

APPEAL DECISION

Docket Number: P20 604

Hearing Date: May 3, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Heather Doisher

None

CASE HISTORY

The claimant, Heather Doisher, timely appealed a November 17, 2020 determination that denied her Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136 (the denial was noticed in Letter ID 0006263763, dated November 18, 2020). The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in April 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 May 3, 2021. Ms. Doisher 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

Heather Doisher established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 14, 2020. The Division eventually 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.

In recent years before the pandemic, Ms. Doisher has had limited connection to the workforce, primarily staying at home with her children. She did earn \$2300 in 2019 in a liquor store job, but was home most of the year. In 2020, however, with all of her children over twelve, she decided to start working again.

Ms. Doisher had about four years of experience working as a personal care assistant (PCA). She made arrangements to start working under the table for a private

individual, Sophie Cruikshank of Eagle River, as a PCA for a special needs child. Ms. Cruikshank worked for a foundation and was also enrolled in school, and needed help up to 40 hours per week.

The start date for the work was apparently March 14, 2020 (a Saturday). The plan was to work toward getting Ms. Doisher a PCA certification so that the PCA work could be reimbursed by a government program. Ms. Doisher and Ms. Cruikshank seem to have thought there was a 30-day window after starting work to do this. (This is not wholly accurate: some requirements must generally be met before bringing the PCA into the home. The consequence of not doing so is forfeiture of reimbursement.)¹ In any event, Ms. Cruikshank apparently was prepared to fund the work herself in the meantime. The pay rate was to be \$15 per hour.

Ms. Cruikshank postponed the job offer indefinitely just before the start date. She did this because the special needs child was particularly vulnerable to COVID-19, and she felt that Ms. Doisher (with extensive community contacts through her own children) would not be a safe person to bring into her home during the pandemic. In addition, Ms. Cruikshank was herself at home during the pandemic due to work and school closures, so she was less in need of assistance. There was a hope at one point that the arrangement could be revived for a start time in mid-October, but additional Covid concerns kept that from coming to pass.

Ms. Doisher and Ms. Cruikshank (attesting to the arrangement by letter) were sufficiently credible that I am able to find as a matter of fact that the PCA job—slightly more likely than not—would have started as arranged on March 14, 2020. However, with Ms. Cruikshank apparently needing a government subsidy to continue the arrangement and with the two women having done nothing to address the preconditions for reimbursement, continued employment beyond the first few weeks seems increasingly doubtful. I find that after the first four weeks, it is no longer more likely than not that Ms. Doisher would have been employed by Ms. Cruikshank.

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,

¹ See *In re Vladi & Associates, LLC*, OAH Case No. 16-1316-MPC (DHSS 2018) (<https://aws.state.ak.us/OAH/Decision/Display?rec=2116>).

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; . . .

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 is undisputed that the claimant could not qualify for non-PUA unemployment benefits.

Beginning March 14 of 2020, Ms. Doisher had an offer to work for Sophie Cruikshank. However, the arrangement was unstable and would likely have come to an end within a few weeks.

For the duration of the likely employment, Ms. Doisher falls within subsection (gg), quoted above.

DECISION

The determination made in [REDACTED] is **REVERSED** with respect to the weeks ending March 14, 2020 through April 4, 2020, inclusive, but is **AFFIRMED** in all other respects. Heather Doisher is eligible for Pandemic Unemployment Assistance from the week ending March 14, 2020 through the week ending April 4, 2020, inclusive, but for no other weeks in 2020.

Dated: May 11, 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 May 11, 2021 the foregoing decision was served on Heather Doisher (by mail and by email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

Office of Administrative Hearings