

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

In the Matter of )  
 )  
BROOKE LESLIE ) OAH No. 21-0653-PUA  
 ) Agency No. P21 055  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 055

**Hearing Date:** May 10, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Brooke Leslie

None

**CASE HISTORY**

The claimant, Brooke Leslie, timely appealed a December 14, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136 for three weeks during April of 2020. Formal notice of the determination was given in [REDACTED], dated December 15, 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 10, 2021. 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. Ms. Leslie testified under oath.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act during the short period covered by the denial.

**FINDINGS OF FACT**

Ms. Leslie established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 4, 2020. Although initially approved, her application was subsequently redetermined to a denial for the weeks ending April 11, 2020 through April 25, 2020, inclusive. This, at least, is what the denial notice stated.<sup>1</sup> However, DETS appears to have also disallowed benefits for the week ending April 4, 2020, albeit without giving notice.<sup>2</sup>

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<sup>1</sup> Exhibit 1, page 2.

<sup>2</sup> Exhibit 1, page 23.

In 2020, Brooke Leslie was set to be the Land Tours Operations Manager for Alaska Waters, a fairly large shore excursion agency in Wrangell that caters almost exclusively to cruise ship visitors. Ms. Leslie had done this work in prior seasons and had even been a part-owner of the business, although she had divested of that role by 2020.

In a normal year, there is a great deal of work that the Land Tours Operations Manager must do in April and early May to prepare for the arrival of the first cruise ships. She would hire seasonal staff, arrange guide training, update insurance coverages, interface with cruise lines, schedule for the company's four shuttle buses and drivers, coordinate with other operators in Wrangell to ensure that no individual attraction would be overwhelmed by simultaneous tour arrivals, and so on. This work would be paid and would require 30-40 hours per week. The preparation work is all done from home in the early phases, transitioning to some on-premises work in early May.

In 2020, Ms. Leslie planned to start the preparation work on April 1, after having a baby that was due on March 19. April 1 was a relatively late date to start, but still left just enough time to get ready. In the event, the baby was a late arrival, delivered March 27. However, Ms. Leslie testified credibly that she could have and would have started a significant amount of work on April 1 nonetheless.<sup>3</sup>

Because of the cancelation of the entire cruise ship calendar for 2020 as a result of COVID-19, Alaska Waters did not operate at all and laid off 25 employees, including Ms. Leslie. She did not find other work, but will resume work for Alaska Waters when cruise passengers return.

### **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

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<sup>3</sup> Indeed, she did a great deal of work in April of 2020 even though the Alaska Waters job did not materialize, because she volunteered to help the community secure COVID grants. The fact that she did this unpaid work corroborates that she was able to work notwithstanding the recent childbirth.

(ii) provides self-certification that the individual—

(l) 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—

\* \* \*

(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; . . .

(B) does not include—

(i) an individual who has the ability to telework with pay; . . . .

**UIPL 16-20, Change 5 Issued by USDOL February 25, 2021**

The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *“An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.”* [italics in original]

**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 appears to be undisputed that Ms. Leslie's role in Alaska Waters did not represent employment that would qualify her for a claim for unemployment compensation in 2020.

Although the reasoning was not fully articulated, DETS appears to have concluded that Ms. Leslie was not “able to work and available for work” in much or all of April 2020 because she had just had a baby and needed to take postpartum leave. The fuller record built in the hearing showed that this is factually incorrect. Ms. Leslie was able to work from home with the newborn in the house.

Ms. Leslie's layoff due to the COVID-related cancellation of all cruises is squarely within the new criterion for eligibility quoted above in Change 5.

Lest there be any confusion, we should note that the exclusion in the CARES Act for people who can telework with pay does not apply to Ms. Leslie. The work she was

going to do was telework, but owing to COVID she could *not* do it. Thus, she could not telework with pay.

The Tribunal finds the claimant meets the definition of a covered individual beginning the week ending April 4, 2020.

### **DECISION**

The determination issued on December 14, 2020 [REDACTED] is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending April 4, 2020 and continuing indefinitely thereafter, unless disqualified by factors postdating her appeal.

Dated: May 12, 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 13, 2021 the foregoing decision was served on Brooke Leslie (by mail and by email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

[REDACTED]  
Office of Administrative Hearings