

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

In the Matter of )  
 )  
BRITTANY WEST ) OAH No. 21-0818-PUA  
 ) Agency No. P21-169  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21-169

**Hearing Date:** June 3, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Brittany West

None

**CASE HISTORY**

The claimant, Brittany West timely appealed a January 13, 2021 determination 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 May 3, 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 June 3, 2021. The Division of Employment and Training Services (DETS) was notified of the hearing but chose to not to appear and provided only written materials for the record. Ms. West appeared and testified under oath. She presented no other witnesses. The record remained open to close of business Monday, June 7, 2021, to allow Ms. West to submit documents in support of her appeal.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act as a “covered individual.”

**FINDINGS OF FACT**

Brittany West established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 29, 2020. The Division determined that the claimant was not eligible for PUA benefits because she was not impacted by COVID-19 and therefore not a covered individual under the program. More specifically, the DETS stated she had not responded to requests for additional information.

Ms. West testified that she was self-employed doing lawn care. She had three lawn mowers that she used, and she hired other workers from time to time to assist her.

She paid her workers in cash and did not have an employer identification number for her business. She did not have a business license when she began her business, although she did obtain one in March 2020 because someone told her she should have one. She did report her income as Schedule C or Schedule SE for her federal taxes. She did not realize she needed to pay self-employment tax for her business. She claimed she earned about \$1,200 every two weeks in the summer season, plus she had a snowplow for winter plowing, and she did Halloween and Christmas yard decorations. She stated she earned about \$1800/month in winter. Ms. West stated she had tried to set up payment by Paypal or Venmo, but it didn't work out.

Ms. West stated that in 2019, she was mowing about 6 lawns a day, but that after the Health Mandates and businesses closing, she was down to one client twice a week. She also was unable to get contracts with commercial clients because companies were closed. Ms. West explained that she didn't file taxes for 2020 because she was told she could file for a "stimulus check" as a non-filer.

Ms. West was unhappy that she was denied benefits because she had not given additional information. She explained she had given the interviewer additional information earlier, and she always responded with information, even before it was due. She had provided new phone numbers, but the last person to call from DETS, who denied her benefits, had not called those new numbers. She didn't receive any correspondence asking for more information.

### **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

...

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

(II) 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); and

(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 No. 16-20, change 1**, issued by the Secretary of Labor on April 27, 2020, added eligibility provisions under Section 2102(a)(3)(A)(ii)(I)(kk): An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19 reasons listed above, including an independent contractor who experiences a “significant diminution of demand” for his or her services as a result of COVID-19.

### **APPLICATION**

I find that Ms. West was a credible, but unsophisticated witness. Despite being 32 years old, she is remarkably uninformed about the legal demands of operating a business or the preparation she needs for her chosen field. Unfortunately, Ms. West was also not well advised despite her commitment to her enterprise. She had, for example, signed up for what she believed was a college course for a degree in landscape architecture to learn skills and allow her to market herself as a garden designer. On further exploration in the hearing, it became clear it was offered by a for-profit institution, marketing Ms. West’s correspondence course in grounds maintenance as “landscape architecture,” and providing no accredited degree. As for record-keeping, she states she bought Quickbooks but hadn’t learned how to use it. She was unaware of her obligation to pay self-employment taxes or to file quarterly tax payments.

Ms. West contributed to the DETS’s understandable suspicion of her claim by submitting “paystubs” she generated with a program on her computer because she didn’t have proper quarterly tax payments or accounting to show the DETS. She submitted the “paystubs” to DETS because it was an app or template that allowed her to show her earnings from her business without understanding the implications of representing herself as an employee, or her company as an “LLC”.<sup>1</sup>

Based on her testimony and the documents she supplied, I find that Ms. West did have an informal, but real, self-employment lawn maintenance enterprise that she operated in 2019, and that, with closure of businesses and a diminished customer base as a result of the 2020 COVID-19 public health emergency, she suffered a “significant diminution of demand” for her services in 2020. I find that Ms. West’s

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<sup>1</sup> An LLC is a legal business entity known as a “Limited Liability Company” that exists separately from its members, sharing some features of a corporation and of a partnership, governed by AS 10.50.010 – 10.50.995.

self-employment enterprise was not an established winter business activity, based on her testimony and lack of winter plowing records submitted. I also find that the yard decoration activity was more of a planned expansion of her business than actual established business activity. I conclude that Ms. West was at least seasonally impacted by the COVID-19 from the week ending March 28, 2020 through the week ending October 3, 2020, when her normal lawn maintenance services would end.

Ms. West is encouraged to contact the Alaska Small Business Development Center, a part of the University of Alaska Anchorage, for counseling, training, and referrals to help her regularize her business. Services are available at little or no cost to her. The Alaska Master Gardener Course is available online through the Cooperative Extension Service of the University of Alaska at a much lower cost than the correspondence course she enrolled in. She may also wish to review the resources available through the State's Small Business Assistance Center, available online at <https://www.commerce.alaska.gov/web/ded/DEV/SmallBusinessAssistanceCenter.aspx>.

### **DECISION**

The decision of January 13, 2021 is REVERSED and the case is remanded for recalculation of overpayment, if any, based on this decision.

Dated: June 9, 2021.




Kris Knudsen  
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 June 9, 2021, the foregoing decision was served on Brittany West (by mail and email to: ). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.



Office of Administrative Hearings