

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

In the Matter of)
)
MARIA ISABEL OWENS) OAH No. 21-0920-PUA
) Agency No. P21 235
_____)

APPEAL DECISION

Docket Number: P21 235

Hearing Date: June 3, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Maria Owens
Charles Albert

None

CASE HISTORY

The claimant, Maria Isabel Owens, timely appealed a January 15, 2021 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136 for part of the period for which she had applied. The decision was recorded in [REDACTED], dated January 19, 2021. 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 June 3, 2021. Ms. Owens testified under oath, as did witness Charles Albert. 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. Owens established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 8, 2020. After initially paying the claim, the Division redetermined that the claimant was not a covered individual under the program outside the core summer season, requesting repayment of \$3597 in benefits.

Ms. Owens operates a handicraft business from Talkeetna which, in 2019, had about \$30,000 in sales. The principal products are birch baskets, jewelry, and Christmas decorations. Talkeetna is a major tourist destination, and in summer Ms. Owens sells to tourists there from a tent on property she owns. The summer tourist season in

Talkeetna (excluding climbers, who presumably are not in the prime customer group for these products) runs essentially from May through September.

That said, Ms. Owens made a strong showing at hearing that her business is, in fact, year-round. She sells at festivals and gift fairs in all months, including the major Southcentral Christmas fairs, Fur Rendezvous, and a number of MatSu Valley gun shows. She also sets up and makes sales in connection with the winter events in and near Talkeetna, such as the Bachelor Auction and Iditarod start.

COVID-19 caused Talkeetna to become “a ghost town” with respect to tourism in 2020. Ms. Owens did set up and attempt to sell during the summer, but business was so slow that it was not worthwhile. Virtually all gift fairs and festivals were canceled until recently. The first show Ms. Owens was able to do normally was the Raven Hall gun show in Palmer in early March 2021. Starting about May 1, Ms. Owens has been able to open her tent in Talkeetna for 2021 tourists, and sales have been excellent on weekends, although they remain disappointing during the week.

Ms. Owens experienced an 85% reduction in sales volume in calendar 2020. Most of the sales that did occur were made before COVID-19 arrived.

Holiday fairs in 2019-20 occurred normally, as did 2020 Fur Rendezvous. The first demonstrable impact on Ms. Owens’s business would be any late March events in Talkeetna and the April 2020 shows.

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—

* * *

* * *

(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; . . .

UIPL 16-20, Change 2 Issued by USDOL July 21, 2020

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

Question 11 of Attachment I of UIPL No. 16-20, Change 2 explains that a freelance writer who works from home but is no longer getting paid for work may be eligible for PUA. Section 2102(a)(3)(B) of the CARES Act provides that an individual who has the ability to telework with pay is not covered under PUA. However, *if the freelance writer has experienced a significant diminution of freelance work because of COVID-19, regardless of his or her ability to telework*, he or she may be eligible for PUA under the additional eligibility criterion established by the Secretary pursuant to Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, though his or her benefit amount may be reduced because of income from continued partial employment.²

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

¹ Emphasis added.

² Emphasis added.

unemployment benefits under any State or Federal program and who is unemployed because of one or more reasons related to the Covid-19 pandemic. The claimant in this case is an independent business operator who does not qualify for regular unemployment benefits.

Guidance from the U.S. Department of Labor in UIPL 16-20 Change 2, cited above, holds that a self-employed individual who experiences a significant diminution in services as a direct result of the pandemic may be considered a covered individual. That is the situation in this case. Ms. Owens's business, which relies heavily on tourism and live gift shows, suffered a dramatic diminution of business due to the Covid-19 pandemic. This marked loss of income due to the pandemic is within the scope of Covid-19 impacts PUA was intended to address.

In denying part of this claim,³ the Division had the impression that the business is entirely seasonal. This was the result of a misunderstanding or miscommunication. Ms. Owens's business is somewhat cyclical, but it has significant activity year-round.

There is one respect in which the Division's decision must be upheld. Ms. Owens's application for PUA was retroactive to the inception of the program. However, she demonstrated no impact to her business prior to mid-March of 2020.

DECISION

The determination in [REDACTED] is **AFFIRMED** as to the period from the week ending February 8, 2020 through the week ending March 14, 2020, inclusive, but is **REVERSED** for the period thereafter. *The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program as of week ending March 21, 2020 through the week ending February 27, 2021.*

Dated: June 4, 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.

³ The notice letter supplied with the record in this case is quite unusual. It does not actually say that any benefits are denied; it simply says that benefits from the week ending May 2, 2022 through the week ending September 26, 2020 are "not negatively impact[ed]." I believe the letter is simply missing a sentence and that the intent was to deny benefits outside that specified span. Ms. Owens confirms that the DETS website shows her benefits as being denied during the earlier and later portions of her claim period.

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 4, 2021, a true and correct copy of this order was distributed as follows: Maria Owens (by mail and by email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

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Office of Administrative Hearings