

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

In the Matter of )

MORGAN MCBRIDE )

OAH No. 21-0909-PUA

Agency No. P21-340

**APPEAL DECISION**

**Docket Number:** P21-340

**Hearing Date:** June 3, 2021

**Claimant Appearances:**

**DETS Appearances:**

Morgan McBride

None

**CASE HISTORY**

The claimant established a claim for Pandemic Unemployment Assistance (PUA) benefits effective the week ending June 6, 2020. The Division of Employment and Training Services (DETS) determined the claimant was not a “covered individual” eligible for PUA benefits from the week ending September 12, 2020 and issued a Notice of the determination to the claimant December 24, 2020 (Letter ID: L0007241679). The determination was timely appealed January 23, 2021.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on May 3, 2020. 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.

This appeal was heard in a recorded hearing on June 3, 2021. The DETS chose to not to appear and provided only written materials for the hearing. Mr. McBride testified under oath but presented no other witnesses. The record remained open through 5:00 p.m. Monday June 7 to receive tax records.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act from the week ending September 12, 2020.<sup>1</sup>

**FINDINGS OF FACT**

Mr. McBride is part owner and operations manager of the Kachemak Bay Wilderness Lodge, situated on China Poot Bay near Homer, Alaska. The lodge is usually open to visitors from June 1 to September 15, but Mr. McBride begins the work of getting the

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<sup>1</sup> The Notice of Unemployment Insurance Appeal states that the appeal was filed “more than 30 days from decision date” on January 23, 2021 (Ex. 1, pg. 1). However, the letter of determination is dated December 24, 2020, not December 23, 2020. The appeal was filed on the 30<sup>th</sup> day after the Notice of Non-Monetary Issue Determination (Ex. 1, pg. 3).

lodge ready for the visitor season in the middle of March. This involves cleaning and repairing lodge buildings, decks, stairs and dock, setting out boats and engines, painting, and plumbing. He remains at the lodge, getting it ready for winter until the week before Thanksgiving in November. During this time, he cleans and winterizes 15 buildings and their plumbing, repairs the docks, pulls the boats out, cleans and winterizes their engines, and secures materials in sheds.

In April 2020, the lodge announced it would remain closed all season, in view of the lack of a tourist season associated with impact of the various emergency orders, mandates, and CDC guidance on travel. This meant that the lodge would have no rental income. It offered guests refunds of their reservations or deferral to 2021. (Ex. 1, pg. 18). After receiving some loans, the lodge hired some workers to assist with repairs and painting during the summer, who were supervised by Mr. McBride as he continued to work at the lodge without wages. In December, a second round of federal money enabled Mr. McBride to draw some salary again.

As a shareholder of the S-corporation that owns the lodge, Mr. McBride receives a share of the rental income and reports it as miscellaneous income. He also receives wages from the S-corporation that are paid to him on a year-round basis, reported as wages on a W-2. In 2019, Mr. McBride reported W-2 wages from Kachemak Bay Wilderness Lodge of \$32,337.39 and miscellaneous 1099 income of \$25,000 from the S-corporation. In 2020, his W-2 reported wages of \$18,666.68.

The DETS offered no explanation of the decision to cease eligibility the week ending September 12, 2020. Apparently, it considered the lack of rental income to have ceased that week, without considering the claimant's reduction in wages paid for the longer work of maintenance.

### **EXCERPTS OF RELEVANT LAW**

#### **The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance**

**(a) DEFINITIONS.**—In this section:

...

(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; 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);

### **Unemployment Insurance Program Letter No. 16-20, change 5.**

The Secretary of Labor on February 25, 2021, added the following eligibility provisions under Section 2102(a)(3)(A)(ii)(I)(kk):

...

- 4.iii 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.

### **APPLICATION**

Mr. McBride's income from the work of running Kachemak Bay Wilderness Lodge, either as a shareholder and recipient of rental income from the S-Corporation that owns the lodge, or as a wage-earning employee of the lodge, suffered a significant diminution in 2020 as a direct result of the COVID-19 public health emergency's impact on tourism. By focusing on the booking season alone, however, the DETS neglected the evidence of the work of preparing the lodge for visitors or the repair and weatherization required to maintain the lodge and its boats for the next season. In addition to the loss of miscellaneous rental income, Mr. McBride suffered a reduction in paid hours as a wage-earning employee of some 42%, which is a significant diminution. Moreover, Mr. McBride's wages were usually paid on a year-round basis, but in 2020 they were not resumed until December.

This case resembles that of *In re Sherry N. Corrington*, OAH No. 21-0188-PUA (March 24, 2021). There, the DETS treated a woman's tourism business as a summer job, neglecting to include both her year-round work and her income flow year-round. The ALJ reversed, holding that she was entitled to pandemic unemployment benefits for the weeks prior to the season and thereafter. Here, Mr. McBride's situation is similar. His work is compensated for as self-employment income (rentals to lodge guests) and that income clearly flowed in the form of reservation deposits at times outside the confines of June 1 to September 15 (Ex. 1, pg. 18). His work was also compensated in

the form of wages paid to him by the S-Corporation throughout the year. His wages stopped until December, even though his work of maintaining the lodge property did not. However, there is no record that he was paid any form of regular unemployment or pandemic emergency unemployment for that period from the cessation of his wages to their resumption in December 2020.

I conclude that again the DETS has defined the period of eligibility too restrictively. I find that Mr. McBride's hours of paid wages from the S-corporation were reduced, and that, as a shareholder of that S-corporation, he also suffered a diminution of demand for the rentals at the Kachemak Bay Wilderness Lodge. I find the reduction in wages and the diminution of demand continued past the week ending September 12, 2020. I conclude that he was eligible as a covered individual under Section 2102(a)(3)(A)(ii)(I)(jj) and (kk) from the week ending September 12 through the week ending November 28, 2020, unless disqualified by eligibility for regular unemployment compensation or pandemic emergency unemployment compensation under Section 2102(a)(3)(A)(i).

### **DECISION**

The determination of December 24, 2020 [REDACTED] is REVERSED.

Dated: June 8, 2021.

[REDACTED]  
Kristin Knudsen  
Administrative Law Judge

### **APPEAL PROCEDURE**

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 8, 2021 the foregoing decision was served on Morgan McBride (by mail and by email). A courtesy copy was emailed to the UI Support Team and the UI Appeals Office.

[REDACTED]  
Office of Administrative Hearings