

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

In the Matter of)
)
JESSICA TANKERSLEY) OAH No. 21-1083-PUA
) Agency No. P21-356
_____)

APPEAL DECISION

Docket Number: P21-356

Hearing Date: June 23, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Jessica Tankersley

None

CASE HISTORY

The claimant, Jessica Tankersley timely appealed a January 27, 2021 determination by the Division of Employment and Training Services (DETS) which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor 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 23, 2021. Ms. Tankersley appeared telephonically and testified. The DETS was notified of the hearing but chose not to make a representative available by telephone or to send one; instead, it relies on the written record.

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

FINDINGS OF FACT

Jessica Tankersley established a claim for Pandemic Unemployment Assistance benefits effective the week ending June 23, 2020. The DETS determined that the claimant was not eligible for PUA benefits because she was not released from her contract due to COVID-19 but because she had a disagreement about her duties as the gardener.

Ms. Tankersley testified that she had worked as a gardener, not a landscaper, for the Elderberry Park Condominium Association (EPCA) for four years. She worked from May 1 to September 30, putting out annuals and other plants, trimming hedges, and

other gardening tasks. Ms. Tankersley said she did not do landscaping because she didn't have a license or insurance to do that kind of work. She was paid through a contract with Snow's Management, which issued all her checks. She was hired through the EPCA Board. On her last day of work, she had a heated disagreement with the president of the EPCA Board, Ms. Jones, that was overheard by other residents. Ms. Tankersley said the disagreement was sparked by her not wearing a mask and approaching the president too closely, not by disagreement about her duties. Ms. Tankersley admitted that the disagreement was heated. However, she believed that Ms. Jones was a volunteer in the garden, and that she should have been given notice or a chance to explain herself to the EPCA Board before her contract was terminated.

Ms. Jones's statement to the DETS interviewer confirmed that there was a disagreement with Ms. Tankersley and that she was "pushed over" of what she could tolerate when Ms. Tankersley refused repeatedly to move some river rocks that had been stacked aside when a fish pond was removed and Ms. Tankersley refused to do it. Ms. Tankersley, according to Ms. Jones, told her she had to get someone else to do that. According to the statement from Ms. Stewart of Snow's Management, she received an email on June 16, 2020, from the president of the EPCA Board that "they had a disagreement" and Ms. Tankersley's services were no longer needed. The Board hired someone else to do the work.

EXCERPTS OF RELEVANT PROVISIONS OF 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—

. . .

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(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); 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 work as a result of COVID-19.

APPLICATION

I find that Ms. Tankersley was self-employed as a gardener and that she had an at-will contract with the EPCA through Snow’s Management. Her contract was terminated following a disagreement with Ms. Jones, president of the EPCA. I find that her “place of work” was the EPCA garden, and this was not closed due to the COVID-19 public health emergency. Another gardener was hired in her place. I also find that Ms. Tankersley was not forced to quit her job as a direct result of the COVID-19 public health emergency. Rather, she was terminated from her seasonal employment after a disagreement with the president of the EPCA Board.

Ms. Tankersley argues that because she disagreed with Ms. Jones on the issue of mask-wearing, the abrupt ending of her contract was a “significant diminution” of work as a result of the COVID-19 public health emergency under Sec. 2102(a)(3)(A)(I)(jj). However, a refusal to wear a mask when requested by an employer is not a reason attributed by the law to COVID-19. If Ms. Tankersley had *wanted to wear a mask* in accordance with state or CDC guidelines and been terminated because she refused to remove it, then a diminution of work could be considered a result of the COVID-19 public health emergency. See, Unemployment Insurance Program Letter No. 16-20, change 5, section 4.i issued by the Secretary of Labor on February 25, 2021. However, Ms. Tankersley’s contract was not terminated because *she* insisted on following health and safety standards “directly related to COVID-19” over her employer’s objections. Thus, even if Ms. Tankersley’s refusal to wear a mask properly


played a role in the termination of her contract, it is not enough to bring it within the scope of the reasons listed in Sec. 2102(a)(A)(ii)(I).

I find Ms. Tankersley remained able and available to work for other facilities needing a gardener and she was not unable to work as a direct result of COVID-19. She has not shown that the diminution in demand for her services was a direct result of COVID-19 but of a disagreement regarding the scope of her contracted services, her performance, and her refusal to comply with the requests of the president of the EPCA Board regarding compliance with mask guidelines.

DECISION

The determination of January 27, 2021 is AFFIRMED.



Dated: June 28, 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 28, 2021, the foregoing decision was served on Jessica Tankersley (by mail to:  /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