

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

In the Matter of )  
 )  
KRISTIN PLATT ) OAH No. 21-1259-PUA  
 ) Agency No. P21 497

**APPEAL DECISION**

**Docket Number:** P21 497

**Hearing Date:** July 13, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Kristin Platt

None

**CASE HISTORY**

Kristin Platt timely appealed a February 23, 2021 determination denying her Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0010053778, dated February 24, 2021.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in June 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 July 13, 2021. Ms. Platt testified under oath. 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 record was held open after the hearing to receive supplemental financial information from Ms. Platt, which she provided immediately.

DETS agrees that benefits are appropriate for a core period corresponding to the summer sportfishing charter season. The issue before the ALJ is whether Ms. Platt meets the eligibility requirements of the Act for an earlier period that precedes the core period.

**FINDINGS OF FACT**

Ms. Platt established a claim for PUA benefits effective the week ending March 7, 2020. After initially paying the claim, the Division redetermined that the claimant was not a covered individual under the program and not eligible for PUA benefits for the week ending March 7, 2020 through the week ending April 25, 2020. The basis was its belief that Ms. Platt's "self-employment does not begin operations until fishing

season, May through September.” DETS sought repayment of the retroactively disallowed benefits.

Kristin Platt is a booking agent for Kenai River sportfishing trips. The number of trips booked is up to 250 per month. She is paid by commission. This means that payment is only made if the trip occurs. Ms. Platt made \$14,117.17 this way in 2019.

Although the right to a commission accrues only when the trip happens, the work of the booking agent is done almost entirely before that. Booking volume is very heavy in the early part of the year, leading up to the summer season. There is continuing work thereafter servicing existing reservations and assisting clients up to the time they get on the boat.

The collapse of the out-of-state tourist season in 2020 led to a tremendous reduction in commissionable work. Ms. Platt worked very hard in March and April of 2020 canceling reservations from customers who were abandoning their plans due to the pandemic, but none of that work generated commissions. The volume of trips dropped to nearly zero for May and June of 2020, recovering somewhat late in the season. Overall volume fell between 40 and 50 percent.

The active charter season ends at the end of September. There is generally not very much booking work for the following season until sometime in the winter. Bookings for 2021 were slow to start, but ultimately have been excellent.

### **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; . . .

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### **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.<sup>1</sup>

### **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 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 owner 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. Platt’s main source of income, a charter booking agency that caters in large part to tourists, suffered a dramatic diminution of business due to travel interruptions in response to the Covid-19 pandemic and due to the reluctance of both locals and visitors to book charters (or retain existing bookings) during the pandemic. This marked loss of income due to the pandemic is within the scope of Covid-19 impacts PUA was intended to address.

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<sup>1</sup> Emphasis added.


In denying eligibility for the period at issue in this case, the Division focused on what it viewed as the seasonal nature of the business. This limitation is inappropriate in the specific case of Ms. Platt. She has a roughly ¾-year business in which workload and revenue do not match up perfectly, meaning that it would be unfair to limit eligibility to the weeks when customers actually go out on the charters, as the Division did. On the contrary, most of Ms. Platt's work happens before the charter takes place; the date of the charter itself is typically a day she *doesn't* work on that charter, and is merely an event triggering the commission that compensates her for all the other work. March and April are extremely busy months for her. In keeping with the considerations explored in *In re Corrington*, Labor Docket P20 468 (OAH March 24, 2021), *In re Chhabria*, Labor Docket P20 378 (OAH April 5, 2021), and *In re Mirchandani*, P21 282 (OAH May 28, 2021), eligibility will begin at the same time COVID-19 concerns began to trigger cancelations and will continue up to and through the charter season. This tribunal finds the claimant meets the definition of a covered individual beginning the week ending March 7, 2020.

Ms. Platt stipulated on the record at the hearing that she does not seek benefits for the fall of 2020.

### **DECISION**

The determination made on February 23, 2021 and noticed on February 24, 2021 in Letter ID L0010053778 is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program as of week ending March 7, 2020 through the week ending April 25. This decision does not address subsequent weeks, which are undisputed (benefits have been paid through the week ending September 26, 2020, and Ms. Platt seeks no benefits thereafter).

Dated: July 19, 2021

  
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 July 19, 2021, a true and correct copy of this document was distributed as follows: Kristin Platt (by mail and by email to [REDACTED]). A copy has been emailed to the UI Support Team, the UI Technical Team, and the UI Appeals Office.

[REDACTED]  
Office of Administrative Hearings