

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

In the Matter of )  
 )  
TONI ROSENTHAL ) OAH No. 21-1340-PUA  
 ) Agency No. P21 551  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 551

**Hearing Date:** August 10, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Toni Rosenthal

None

**CASE HISTORY**

The claimant, Toni Rosenthal, timely appealed a February 22, 2021 determination 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. 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 August 10, 2021.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

Toni Rosenthal established a claim for Pandemic Unemployment Assistance benefits effective the week ending May 2, 2020. On February 22, 2021 the Division issued a determination that the claimant was not eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program.

Toni Rosenthal is a [REDACTED] woman who has lived in Alaska since she was three years old. She has a history of work in the restaurant industry. She attended a Holland America Princess Cruise Lines (Princess Cruise Lines) Job Fair in Fairbanks in March 2020.

Ms. Rosenthal received a letter dated March 12, 2020, from the Princess Cruise Lines employment office, offering her a position as a prep cook for the 2020 tourist season. The letter stated she should report to work May 2, 2020. The letter contained the standard warning that the job offer was conditioned on a background check and would be withdrawn if the investigation was unsatisfactory. In addition, Ms.

Rosenthal would be required to sign a contract for the season.<sup>1</sup> Ms. Rosenthal credibly testified she accepted the job.

On March 13, 2020, Princess Cruise Lines announced it was pausing its global operations for two months. Princess Cruise Lines subsequently cancelled the 2020 Alaska cruise season in its entirety.<sup>2</sup> As a result, Ms. Rosenthal's job offer was also cancelled.

Ms. Rosenthal thereafter accepted a job detailing cars in Fairbanks on June 9, 2020, but as she said, "The job with Princess Cruises was different. It was a real opportunity to get a job that would go somewhere (professionally)...It would have changed my life."

Ms. Rosenthal applied for PUA benefits for the time between when her job with Princess Cruise Lines should have started and when she accepted the auto-detailing job. The Division denied her request for benefits on February 22, 2021. The denial letter stated the Division had concluded "no official offers to begin work were ever given."<sup>3</sup> The Division apparently based this statement on a report from Princess Cruise Lines that it could not verify Ms. Rosenthal's employment because the 2020 Alaska season was cancelled before the background check was completed and Ms. Rosenthal's contract signed.<sup>4</sup>

#### **EXCERPTS OF RELEVANT PROVISIONS OF LAW**

The CARES Act creates three new UI programs: Pandemic Unemployment Compensation (PUC), Pandemic Emergency Unemployment Compensation, (PEUC) and Pandemic Unemployment Assistance (PUA). PUA provides emergency unemployment assistance to workers who are left out of regular state UI or who have exhausted their state UI benefits(including any Extended Benefits that might become available in the future).<sup>5</sup>

To be eligible, PUA applicants must establish that they are a "covered individual" under the ACT. Pursuant to CARES Act, Pub. L .No. 116-136 § 2102(A) a "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

---

<sup>1</sup> Ex. 1., p. 12.

<sup>2</sup> <https://www.cruisetradenews.com/princess-cruises-cancels-summer-2020-sailings/>; <https://www.travelpulse.com/news/cruise/princess-cruises-cancels-much-of-2020-summer-season.html>

<sup>3</sup> Ex. 1, p. 3.

<sup>4</sup> Ex. 1, p. 13.

<sup>5</sup> *Id.*

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—

(aa) the individual has been diagnosed with COVID 19 or is experiencing symptoms of COVID 19 and seeking a medical diagnosis.

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID 19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID 19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID 19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID 19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID 19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID 19;

(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).

### **APPLICATION**

**Ms. Rosenthal is a covered individual under § 2102(A)(ii)(1)(gg): she was able to demonstrate that she was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency.**

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. It is undisputed that the claimant's work history did not qualify her to claim regular or other unemployment benefits in 2020.

The rationale in the Division's denial letter that the claimant was "never given an official offer of employment" is puzzling. The Division appears to have ignored or discounted the March 12, 2020, letter from the employer that the claimant submitted in support of her claim. The letter stated:

I am pleased to confirm our offer of employment for the Cook Prep (Seasonal) position at the Fairbanks Riverside Lodge (Fairbanks, AK). The wage for the position is \$11.00/hr. This is a seasonal position.

...

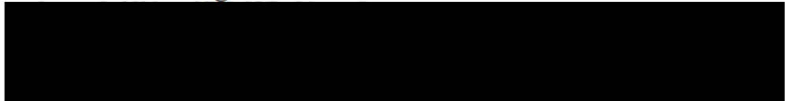
Your employment contract begins Saturday May 2, 2020 and ends Tuesday September 15, 2020.<sup>6</sup>

This letter constitutes a firm job offer, and the claimant credibly testified that she accepted the offer and was planning to start working for the employer when COVID-19 caused Princess Cruise Lines to cancel all seasonal employment contracts. Whether Ms. Rosenthal had finalized the paperwork for the job with the personnel department is immaterial to the question of whether she received a valid job offer.

### DECISION

The February 22, 2021 determination by the Division is **Reversed**. The claimant is eligible for Pandemic Unemployment Assistance benefits for the period effective the week ending May 2, 2020 through the week ending June 13, 2020.

Dated: August 10, 2021,

  
Carmen E. Clark  
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.

---

<sup>6</sup> Ex. 1, p. 12.

**CERTIFICATE OF SERVICE**

I certify that on August 11, 2021, the foregoing decision was served on Toni Rosenthal (by mail and email to [REDACTED]). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

[REDACTED]

Office of Administrative Hearings