

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

In the Matter of)
)
MEGAN PORTER) OAH No. 21-1887-PUA
) Agency No. P21 933
_____)

APPEAL DECISION

Docket Number: P21 933

Hearing Date: October 12, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Megan Porter

None

CASE HISTORY

The claimant, Megan Porter, timely appealed two July 12, 2021 determinations by the Division of Employment and Training Services (DETS) which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136 for the period from the week ending April 4, 2020 through April 11, 2020 (Letter ID: L0013876085) and for the period beginning the week ending August 29, 2020. The Department of Labor referred the appeal to the Office of Administrative Hearings on September 1, 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 October 12, 2021. Ms. Porter appeared telephonically from Seward, Alaska and testified under oath. Although informed of the hearing, the DETS chose not to appear or make a representative available by telephone; it relies on the documents it submitted in this appeal and which are admitted without objection as Exhibit 1. Ms. Porter submitted copies of text messages which are also admitted into evidence.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act for two periods: from the week ending April 4, 2020 through April 11, 2020, and beginning the week ending August 29, 2020 and continuing thereafter.

FINDINGS OF FACT

Megan Porter established a claim for Pandemic Unemployment Assistance benefits on May 31, 2020 effective the week ending April 4, 2020. The Division determined 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.

Ms. Porter, formerly Ms. McCracken, is the daughter of a Seward fishing family that operates SeaShore Enterprises (owned by her mother) and works the 85-foot tender her father built, the *F/V Megalodon*. Ms. Porter is a “skipper in training” so she serves as “relief skipper” as well as deckhand on the *F/V Megalodon*, and, when the vessel is in dry dock, as repair hand, runner, and owner representative.

The *F/V Megalodon* contracts to supply salmon to the Silver Bay Seafoods canneries in Naknek and in Valdez. Crews begin work to ready the vessel around the end of March, then are leaving for Bristol Bay by sometime in June. After 30 days or more of tendering, they reposition to Valdez, where they work for 30 days or more to the end of the season. Then the crew moves the vessel to Seward where it is drydocked for repairs and refitting. In common with most fishing crews, hands are not paid while working to ready the vessel or pulling it into dry dock because this an expected part of earning their “share” of the catch or their seasonal contractor pay. Instead, they get paid only during the time that the vessel is on contract to Silver Bay Seafoods.

Ms. Porter is also a licensed hairdresser who has worked as an independent contractor renting a chair in different salons. In January of 2020, she was working after hours cleaning a full-service salon-spa off Bogard Road in Wasilla as an independent contractor. She cleaned, vacuumed, and did laundry for the business. She provided check copies and paystubs demonstrating she was paid for this work. She testified the salon closed due to COVID-19 and has only partly reopened, without spa services, so that her work is no longer required.

In December 2020, she began renting a chair at Magnate Alaska, LLC. After a dispute with another chair renter, she was not called back for hours at her regular salon. She insists she did not voluntarily quit this position and submitted copies of texts sent to the manager to establish that fact. However, the question whether Ms. Porter was, or was not eligible for regular unemployment benefits at that point is not before this tribunal.

Ms. Porter did not fish in 2019 as she had a child as the fishing season was starting. She was planning on fishing the 2020 season in Bristol Bay and Valdez, however. Her plan was to bring a sitter with her to Naknek, so she could leave her child with her, seeing the child a couple times a week while tendering in Naknek, and then to travel with her child to Valdez, where there was care available and the work on the vessel was not so hectic. Unfortunately, when COVID-19 travel restrictions were put in place, she was unable to go forward with this plan. She was unable to travel to Bristol Bay with her child or to keep her aboard the *F/V Megalodon* in Valdez. The nanny she had engaged was required to self-quarantine. Finally, quarantine rules in place required all crew members to vessels to quarantine for 14 days before tying up to any other vessel, and crews were forbidden to go into town to visit, or even to interact with others at the cannery docks. As a result, Ms. Porter was unable to fish the Bristol Bay or Valdez season. As she recalled, the season lasted until the end of August and the vessel would have come out of the water shortly afterward.

In 2021, she traveled to Seward for the end of *F/V Megalodon*'s readiness work, staying at the family home in Seward. She stated that "the welders" were at work on the *F/V Megalodon* and the crew was not allowed aboard until they had completed work, so she did not arrive in Seward until the first week of June. She worked in aid of the vessel until it finally departed for Bristol Bay on June 23, 2021, then she returned to Wasilla. On August 4, 2021, she met the vessel in Valdez. She fished as relief skipper in Valdez, as well as acting as runner and expeditor, putting about 15,000 miles on her truck. She traveled with the vessel to Seward on September 6, 2021, when the vessel went into drydock. She remained in Seward, continuing to assist with repairs and acting as runner and owner representative. At the time of the hearing, she was in Seward, working on replacing a refrigerator door, moving electrical panels, replacing the stove, and extending the fish hold in the drydocked *F/V Megalodon*.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance, amended by Consolidated Appropriations Act, Public Law 116-260, Div. N, Title II, subchapter IV, Sec. 241 (a).

(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—

...

(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;

...

- (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
 - (iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; 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).

APPLICATION

I find that Ms. Porter was a credible witness. I find that she was employed as an after-hours cleaner/janitor at the Bogard Road hair salon and spa, and she was unable to earn money doing this work after the salon closed in accord with Alaska COVID-19 Health Mandate 011 on March 28, 2020. I find that, while personal care services (including day spas and hair salons) were permitted to open to 50% capacity upon conditions effective May 8, 2020 (Alaska COVID-19 Health Mandate 016, Attachment G), the owner of the business opened only the hair salon, which left Ms. Porter without work. Ms. Porter was unable to relate any specific statement by the owner. While it is reasonable to assume that difficulty complying with the state requirements for COVID-19 mitigation may have motivated the decision, without a statement from the owner as to the reason for the partial reopening, I cannot find that it was due to COVID-19 after May 8, 2020. Therefore, I conclude that Ms. Porter was eligible for PUA benefits from the week ending April 4, 2020 through the week ending May 9, 2020 under section 2102(a)(3)(A)(ii)(I)(jj).

I find that Ms. Porter's ability to travel to Seward for the fishing tender *F/V Megalodon*'s preseason and to work aboard vessel in Bristol Bay and Valdez likewise was impacted first, by her nanny having to quarantine, then by the quarantine rules in place in Naknek and Valdez, those put in place by Silver Bay Seafoods, and the

state's COVID-19 Health Mandate 017, Appendix 1, concerning the commercial fishing industry, effective April 24, 2020. I find that although Ms. Porter was paid contemporaneously with the contract period between the vessel and the cannery, she worked in aid of the vessel for a longer season, generally running through May and June until sometime in September or, as demonstrably the case this year, October. I find that Ms. Porter was unable to work her forecast season aboard the *F/V Megalodon* in 2020 due to the combination of the closure of her arranged childcare and the quarantine requirements imposed by local government, the state government, and the cannery's mitigation plan. I conclude that she was, therefore, eligible for PUA benefits as a covered individual under Section 2102(a)(3)(A)(ii)(I)(dd), (ee) and (kk) from the week ending May 9, 2020 through the week ending October 3, 2020.

Unfortunately, this leaves Ms. Porter with a substantial overpayment, as it appears from Exhibit 1, pgs 28-31, that she was paid PUA benefits through the week ending June 5, 2021. This hearing does not encompass any request for a waiver of recoupment or other relief Ms. Porter may seek, or if she is qualified for it. If a waiver is not granted, she must be given a separate appeal hearing on that issue. The present decision does not decide them for or against Ms. Porter.

The Division has advised the OAH that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available, Ms. Porter can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

DECISION

The determination of July 12, 2021 (Letter ID: L0013876085) is **REVERSED**. The determination of July 12, 2021 (Letter ID: L0013829350) is **MODIFIED** to provide that Ms. Porter did not meet program eligibility requirements beginning the week ending October 10, 2020.

Dated: October 28, 2021,



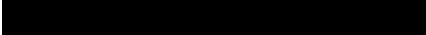
Kris Knudsen
Administrative Law Judge

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 October 29, 2021, the foregoing decision was served on Megan Porter (by mail and email). A 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