

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

In the Matter of)
)
LAUREL ENLOE) OAH No. 21-1947-PUA
) Agency No. P21 937 03
_____)

APPEAL DECISION

Docket Number: P21 937 03

Hearing Date: October 25, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Laurel Enloe
Frederick Hills¹

None

CASE HISTORY

The claimant, Laurel Enloe, timely appealed a June 9, 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 October 25, 2021.

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

FINDINGS OF FACT

Laurel Enloe established a claim for Pandemic Unemployment Assistance benefits effective the week ending December 26, 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.

Laurel Enloe was born and raised in Sitka, Alaska. From 2015 through 2018 she worked for Pizza Express. In January 2020 Ms. Enloe moved to Juneau, Alaska.

According to her testimony, Ms. Enloe was living with her significant other and was pregnant when the Governor's Disaster Declaration and Infrastructure Order were announced in March 2020. She was not employed outside the home.

¹ Mr. Hills identified himself as an older friend who acted as a father figure to Ms. Enloe to the ALJ. Mr. Hills acknowledged that he had previously identified himself as Ms. Enloe's romantic partner and falsely claimed to be her deceased father to the Division.

Ms. Enloe testified she was medevacked from Juneau to Anchorage in July 2020 following an emergency C-Section. Her mother accompanied her to Anchorage to provide emotional support and assistance. Ms. Enloe and her mother were exposed to COVID-19 while in Anchorage. According to a letter from the State of Alaska, Department of Health and Social Services, Ms. Enloe was quarantined and placed in isolation until July 31, 2020.

On her electronic application for PUA benefits, Ms. Enloe stated she was supposed to start a job on March 3, 2021, but the job offer was retracted due to the pandemic.² Her potential employer was not listed on the electronic application, but Ms. Enloe provided a copy of a letter from John Henry, head cook at *Peggy's Italian Restaurant*, verifying an offer of employment with a start date of July 27, 2020-- while she was still in quarantine.³ The Division verified that *Peggy's Italian Restaurant* was not licensed by the State of Alaska nor did it have any electronic presence on the internet. The telephone number listed on the employment letter went unanswered.

In a telephone conversation with the Division on June 7, 2021, Ms. Enloe told the Division representative that the job offer was from *Peggy's Diner and Pies*.⁴ *Peggy's Diner* is an Anchorage restaurant established pre-statehood.⁵ It has been in the same location in a pale purple building on 15th Avenue for decades. The Division contacted management at *Peggy's Diner* and was informed Ms. Enloe had not been offered employment at their establishment for March 2021 or any other time.

At the hearing Ms. Enloe testified she had never applied to work at *Peggy's Diner and Pies*. She had applied at *Peggy's Italian Restaurant* after seeing a job posting on Craig's List. She told the ALJ she did not go to a restaurant or meet Mr. Henry in person; all communication was via text or telephone. Ms. Enloe and Mr. Hills suggested that she had been the victim of a potential phishing scam. They testified that in hindsight they did not believe Ms. Enloe received a legitimate job offer from Mr. Henry.⁶

Ms. Enloe completed her testimony by stating that other than the offer from *Peggy's Italian Restaurant* she had not received any employment offer from July 2020 when she arrived in Anchorage to October 25, 2021, the date of the hearing. Ms. Enloe hoped, however, that she might be eligible for PUA benefits for the time she was

² Ex. 1, pp. 23-24.

³ *Id.*, p. 15.

⁴ *Id.*, pp. 11-12, 27-28.

⁵ https://www.facebook.com/pg/alaskanpeggy/photos/?ref=page_internal

⁶ This testimony was not entirely consistent with the information provided to the Division where Ms. Enloe made conflicting statements regarding her employment. According to Division records, Ms. Enloe gave an address on 15th street, the location of the actual *Peggy's Diner* and identified *Peggy's Italian Restaurant* as located on Dimond and Old Seward. Ex. 1, p. 28. It appears Ms. Enloe may have claimed job offers from both restaurants to the Division. She was very clear at the hearing, however, that she was not claiming to have ever received a job offer from *Peggy's Diner*.

quarantined in June/July 2020 or afterwards due to the difficulty finding a job during the pandemic.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

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

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law.⁷ The CARES Act creates three new unemployment insurance assistance (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).⁸

To be eligible, PUA applicants must establish that they are a covered individual under the ACT. CARES Act, Pub. L .No. 116-136 § 2102(a)(3)(A) defines “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—

(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;

⁷ CARES Act, S. 3548, 116th Cong. (2002).

⁸ *Id.*

(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); 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

Ms. Enloe is not a covered individual for purposes of the CARES Act: she could not demonstrate that her circumstances met any of the eligibility criteria.

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 Division’s rationale for finding the claimant ineligible for PUA benefits is based on a fundamental premise of the law governing PUA eligibility: Ms. Enloe was not attached to the work force at the time she applied for benefits.

To be eligible for PUA benefits, a person must be able to show that the pandemic caused them to lose either a job or income or a contracted-for or agreed-upon job opportunity. Each of the eligibility categories from the CARES Act listed above describes a scenario where a person lost a job or hours at a job, was forced to quit a job, or was unable to get to their place of work, and variations on those themes, all as a result of the COVID-19 pandemic.

Here, Ms. Enloe admitted in her testimony that she did not lose an actual job as a result of the pandemic, nor had she accepted a legitimate job offer that she was unable to start due to the pandemic. Ms. Enloe was unemployed at the beginning of the pandemic due to a complicated pregnancy. Ms. Enloe may have anticipated being able to return to employment after the birth of her child, but she did not have a confirmed offer or date to do so. Based on these undisputed facts, DETS’s determination that the claimant was not eligible for PUA benefits was correct.

DECISION

The June 9, 2021-determination decision by the Division is **Affirmed**.

Dated: October 25, 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.

CERTIFICATE OF SERVICE

I certify that on October 29, 2021, the foregoing decision was served on Laurel Enloe (by mail/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