

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

In the Matter of	)	
	)	
LISA TOBLER	)	OAH No. 21-1955-PUA
_____	)	Agency No. P21 947

**APPEAL DECISION**

**Docket Number:** P21 947

**Hearing Dates:** December 13, 2021  
and December 22, 2021  
Record open to December 29, 2021

**CLAIMANT APPEARANCES:**

Lisa Tobler

**DETS APPEARANCES:**

None

**CASE HISTORY**

The claimant, Lisa Tobler, timely appealed an August 2, 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 recorded hearings on December 13 and December 22, 2021. The record was held open until December 29, 2021 for Ms. Tobler to submit business records.

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

**FINDINGS OF FACT**

Lisa Tobler established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 8, 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.

Lisa Tobler is a long-time Alaskan. She typically works at restaurants or for banquet caterers. In January 2020 she was living with her two adult sons, but between jobs.

Ms. Tobler is friendly with several of her neighbors, one of whom is a diabetic. Another is an older man who lives alone. Both people complained to Ms. Tobler about their difficulties doing caretaking chores around the home such as cleaning or yardwork. When one of them jokingly asked if she could do it, Ms. Tobler responded, “Why not? I do it at my own home.”

Ms. Tobler testified that conversation was the catalyst for her to decide to open her own cleaning business. She called it “Family Cleaning and Lawn Services.” Ms. Tobler contacted other neighbors and asked around her neighborhood. She testified that by February 2020, she had five clients who paid her weekly for two to five hours of work at their homes. Ms. Tobler would supply her own cleaning agents.

However, according to Ms. Tobler, before her business could get off the ground or she could purchase a business license, the Governor’s March 2020 Disaster Declaration and Infrastructure Order concerning the coronavirus pandemic were announced. Her clients cancelled her services and they have never returned.

She applied for PUA benefits effective the week ending February 8, 2020. DETS denied her claim finding she did not meet the criteria for an established self-employment business. Ms. Tobler appealed.

Ms. Tobler testified as set out above to assist in verification of her business. She was given to December 29, 2021 to submit corroboration and proof such as verification letters from clients, copies of receipts, or other documentation that her business was in operation prior to March 2020. No records were received at OAH by 4:30 p.m. that day.

**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.<sup>1</sup> 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).<sup>2</sup>

To be eligible, PUA applicants must establish that they are a “covered individual” as defined by the Act. Sec. 2102(3) defines “covered individual”—

(A) means an individual who—

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<sup>1</sup> CARES Act, S. 3548, 116<sup>th</sup> Cong. (2002).

<sup>2</sup> *Id.*

(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;

(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. Tobler is not a covered individual under the criteria set forth in § 2102(a)(3)(A)(1)(I)(kk) of the CARES Act: she was not able to demonstrate the existence of a self-employment business prior to the pandemic, reliable and reportable income from that business, or that the business suffered a significant diminution as a direct result of the COVID-19 pandemic.**

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is not eligible for unemployment benefits under any State or Federal program and who is unemployed due to one of the listed reasons related to the COVID-19 pandemic. Ms. Tobler attempted to self-certify PUA eligibility for the period effective the week ending February 8, 2020 based on self-employment as housekeeper and lawn service. Such employment would not qualify her to claim regular unemployment benefits.<sup>3</sup>

Whether a self-employed person is a covered individual under the Act is determined by reference to § 2101(a)(3)(A)(ii)(I)(kk). That section applies when the applicant is unemployed, partially unemployed, or unable or unavailable to work because they meet “additional criteria established by the Secretary for unemployment assistance under this section.” The U.S. Department of Labor (USDOL) issued two Unemployment Insurance Program Letters (UIPL) outlining eligibility criteria for self-employed people seeking state PUA relief. Under those standards the claimant must prove that they were 1) self-employed prior to the pandemic, 2) received a reliable and

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

reportable income from self-employment prior to the pandemic, and 3) suffered a *significant diminution* of business as a direct result of the COVID-19 pandemic.<sup>4</sup>

Ms. Tobler does not meet the criteria set by § 2101(a)(3)(A)(ii)(I)(kk). Accepting her testimony at the hearing at face value, her self-employment business had existed for less than six weeks before the pandemic was announced. She did not have a business license. She did not have proof of a reliable and reportable income from which continued success could be inferred and her losses ascertained. There was no proof of reliable income or loss of income from Family Cleaning and Lawn Services. Ms. Tobler did not establish that she was more likely than not eligible for PUA assistance under § 2102(a)(3)(A)(ii)(I)(kk) under the controlling legal standards.

Unfortunately for Ms. Tobler, she decided to open a new enterprise at the cusp of the pandemic. There may be a demand for her services in the future (or now), but her cleaning service had not been in existence long enough to establish a history of self-employment of sufficient duration or success to trigger CARES Act Coverage.

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<sup>4</sup> UIPL 16-20, Issued by USDOL April 5, 2020 item (kk): The individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

The Secretary has determined that, in addition to individuals who qualify for benefits under the other criteria described above, an individual who works as an independent contractor *with reportable income* may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities and has thereby forced the individual to suspend such activities. . . . [italics added].

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.

## DECISION

The August 2, 2021 determination by the Division is **AFFIRMED**.

This decision does not address Ms. Tobler's eligibility after the week ending August 7, 2021, the week the Division issued its determination. Subsequent eligibility should be determined by DETS, and the claimant provided a separate right to appeal if required.

Dated: December 29, 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 January 3, 2022, the foregoing decision was served on Lisa Tobler (by mail and email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

  
Office of Administrative Hearings