

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

In the Matter of)
)
ANNIE HEINRICH) OAH No. 22-0021-PUA
) Agency No. P22 008
_____)

APPEAL DECISION

Docket Number: P22 008

Hearing Date: February 15, 2022

CLAIMANT APPEARANCES:

Annie Heinrich

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Annie Heinrich, timely appealed a December 9, 2021 determination by the Division of Employment and Training Services (DETS) which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136 from the week ending January 2, 2021 for failure to substantiate employment or self-employment impacted by the COVID-19 public health emergency. The Department of Labor referred the appeal to the Office of Administrative Hearings on January 11, 2022. 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 February 15, 2022. To allow the ALJ to contact the State of Alaska for an incarceration record, and to allow Ms. Heinrich time to respond to it, the record remained open to Friday, February 18, 2022. The record, received February 16, 2022, was conveyed to Ms. Heinrich the same day. No objection was received from Ms. Heinrich and the record was admitted as Exhibit 2. The hearing record closed February 18, 2022.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act from and after the week ending January 2, 2021.

FINDINGS OF FACT

Annie Heinrich was living at Midtown Center halfway house when she obtained employment as a housekeeper at Staybridge Suites in March of 2020. Unfortunately, Staybridge Suites contacted her residence manager to inform Ms. Heinrich that her services were no longer required following publication on March 22, 2020 of the Municipality's EO 03 and the State of Alaska's COVID-19 Health Mandate 10 (requiring travelers to quarantine) and COVID-19 Health Mandate 11 (limiting

intrastate travel). Ms. Heinrich had worked two weeks at Staybridge prior to this notice. In a telephone call to the DETS, the housekeeping manager, Tammy, verified Ms. Heinrich's employment (Ex. 1, p.14). Ms. Heinrich was paid PUA benefits from the week ending March 28, 2020 through the week ending October 31, 2020, and these benefits are not denied (Ex. 1, pg. 21-22).

On October 7, 2020, Ms. Heinrich was briefly arrested and released a week later. However, on November 7, 2020, she was re-arrested and held at Hiland Mountain Correctional Center until November 24, 2020. Because she had been paid PUA benefits during her incarcerations, an offset was claimed from the week ending December 5, 2020 through the week ending December 19, 2020. Ms. Heinrich does not contest the offset, nor does she claim PUA benefits for the period she was incarcerated.

Ms. Heinrich was arrested again on January 27, 2021, and she remained incarcerated until March 7, 2021. She did not file for PUA benefits from the last week of January until the first week of March 2021. She was arrested on May 27, 2021 and released the same day, and she was arrested June 6 and released June 8, 2021. She continued to receive PUA benefits until the week ending June 26, 2021. Ms. Heinrich has not been arrested since, and she has continued her probation without further incident.

Ms. Heinrich testified she got a job with "ESS" working as a housekeeper at Donlin Gold mine at the end of March 2021. She was let go on May 9, 2021 for reasons not related to COVID-19. She was later hired as a housekeeper by Hospitality Services to work at the La Quinta Hotel. This job ended after she was injured in a car crash at the end of August. Ms. Heinrich, who has had two prior back surgeries, has not worked since that accident. As she put it, she is just not yet up to making 40 beds a day.

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), codified as 15 U.S.C. § 9021:

(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—
 - (aa) the individual has been diagnosed with COVID-19
 -
 - (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;
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 - (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;
 -
 - (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.

Unemployment Insurance Program Letter No. 16-20, change 1.

Guidance issued by the Secretary of Labor on April 27, 2020 added eligibility provisions under Section 2102(a)(3)(A)(ii)(I)(kk): An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19 reasons listed above, including an independent contractor who experiences a “significant diminution of work as a result of COVID-19.

Unemployment Insurance Program Letter No. 16-20, change 5.

Guidance issued by the Secretary of Labor on February 25, 2021 added eligibility provisions under Section 2102(a)(3)(ii)(I)(kk): Individuals experiencing a reduction of hours or a temporary or permanent layoff. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: “*An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.*”

8 AAC 85.350. Able to work and available for suitable work: general provisions

- (a) A claimant is considered able to work if the claimant is physically and mentally capable of performing work under the usual conditions of employment in the claimant's principal occupation or other occupations for which the claimant is reasonably fitted by training and experience.
- (b) A claimant is considered available for suitable work for a week if the claimant
 - (1) registers for work as required under 8 AAC 85.351;
 - (2) makes independent efforts to find work as directed under 8 AAC 85.352 and 8 AAC 85.355;
 - (3) meets the requirements of 8 AAC 85.353 during periods of travel;
 - (4) meets the requirements of 8 AAC 85.356 while in training;
 - (5) is willing to accept and perform suitable work which the claimant does not have good cause to refuse;
 - (6) is available, for at least five working days in the week, to respond promptly to an offer of suitable work; and
 - (7) is available for a substantial amount of full-time employment.

APPLICATION

Pandemic Unemployment Assistance (PUA) was one of the ways the CARES Act of 2020 provided to mitigate the economic effects of the COVID-19 pandemic. It provided temporary assistance to those working individuals who did not qualify for regular unemployment compensation but who nonetheless were rendered unemployed or partially unemployed by COVID-19. It is not a general relief program, so a key part of eligibility for PUA benefits is the causal relationship between the unemployment (or partial unemployment) and COVID-19. In this case, there is no dispute that Ms. Heinrich lost her employment at Staybridge Suites in March 2020 as a result of the

COVID-19 public health emergency. See, UIPL No. 16-20, Change 5, Attachment I, page I-8.

Effective December 27, 2020, Congress amended the CARES Act's definition of a "covered individual" to include a requirement for some form of documentation of employment (or self-employment) and the loss of the employment as a result of COVID-19. Documentation of employment was to include, but was not limited to, paycheck stubs, earnings and leave statements showing the employer's name and address, and W-2 forms when available. Proof of self-employment includes, but is not limited to, state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits verifying the individual's self-employment.¹ Failure to comply within the stated time without good cause renders a person ineligible for PUA benefits.² However, the Secretary's guidance makes clear that a person cannot be deemed ineligible for a week of unemployment ending before the date of the amendment's enactment (December 27, 2020) solely for failure to submit documentation.³

I find that Ms. Heinrich was able to secure verbal verification of her employment at Staybridge Hotel in 2020. However, I also find that the DETS records of the "covered wages" paid by Staybridge Suites to Ms. Heinrich in the second quarter of 2020 (Ex. 1, pg. 8) constitute sufficient documentation to verify Ms. Heinrich was employed in March 2020 and that her employment ceased as a result of COVID-19. Thereafter, she remained eligible for benefits, with exceptions. Her employment availability was interrupted by one week of incarceration in October 2020 and three weeks of incarceration in November 2020.

Following December 27, 2020, however, Ms. Heinrich did not introduce new verification that she continued to be unemployed by Staybridge Suites "as a direct result" of the COVID-19 public health emergency. Ms. Heinrich failed to produce a paycheck stub or a record from either the housekeeping manager or the manager of the halfway house (who could have noted the information received from the housekeeping manager). I find Ms. Heinrich instead relied on the prior verbal statement from July 2020 as being sufficient, despite the Congressional directive. I find she made no effort to obtain and submit any written documentation of the employment in March 2020, even her W-2 for that employment. I find she did not demonstrate good cause for failing to submit documentation of her employment in 2020 after December 27, 2020. Notwithstanding the verbal information given in the interview with DETS staff and the DETS record of covered wages, Ms. Heinrich was required by 15 U.S.C. § 9102(a)(3)(A)(iii) to submit documentation and failed to do so.

¹ Unemployment Insurance Program Letter No. 16-20, Change 4, Attachment I, page I-10, issued by the U.S. Department of Labor January 8, 2021.

² *Id.* at I-11.

³ *Id.*

Ms. Heinrich also claimed to have self-employment as a handyman under the name “A-N-E Odd Jobs.” She did small remodeling jobs, bathrooms, flooring, and yardwork. She testified she did not earn enough in 2019 to pay taxes on her earnings. She holds an active State Business license, but it was secured in May of 2021. She testified that she didn’t get calls to work in people’s houses following the Municipality’s “hunker down order.” While she testified she had submitted receipts for this work to DETS, she did not produce records for the ALJ, and none were included in Exhibit 1. In the absence of any 2020 records of self-employment activity or jobs cancelled due to COVID-19, I cannot find that Ms. Heinrich supplied sufficient documentation of her self-employment in 2019 or 2020. Therefore, I conclude that she was ineligible for PUA benefits after the week ending January 2, 2021.

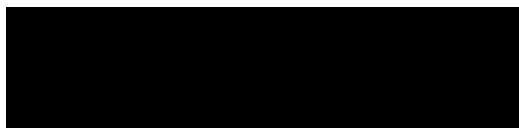
In addition, there were other periods when Ms. Heinrich was ineligible for other reasons: I find that Ms. Heinrich was not “able and available” for employment within the meaning of state law (8 AAC 85.350) while she was incarcerated between January 27, 2021 and March 7, 2021. She was ineligible for PUA benefits during that time because she did not meet the qualification in 15 U.S.C. § 9102(a)(3)(ii)(I) of being “otherwise able to work and available for work.”

I find that Ms. Heinrich was ineligible for PUA benefits when she was employed by “ESS” (presumably Statewide Services, Inc.) as a housekeeper at the Donlin Gold mine, because she was not “unemployed” as required by 15 U.S.C. § 9102(a)(3)(ii)(I). I find the loss of employment as a housekeeper at Donlin Gold mine was, as Ms. Heinrich frankly admitted, not a result of COVID-19. Therefore, her unemployment from May 9, 2021 through the date she began working for Hospitality Associates was not a result of the COVID-19 public health emergency. I find that Ms. Heinrich was not eligible for PUA benefits after she secured employment with Hospitality Associates, Inc., again because she was not unemployed. Finally, I find that Ms. Heinrich’s loss of employment as a housekeeper at the La Quinta Hotel was not a result of COVID-19, but of her disability following a car accident. Therefore, she was not eligible for PUA benefits.

DECISION

The determination of December 9, 2021 is **AFFIRMED**.

Dated: February 22, 2022,



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 February 22, 2022, the foregoing decision was served on Annie Heinrich (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



*Alaska Department of Labor and Workforce Development
Appeals to the Commissioner*

Please read carefully the enclosed Appeal Tribunal decision. Any interested party (claimant or the Division of Employment and Training Services [DETS]) may request that the Commissioner accept an *appeal* against the decision (AS 23.20.430-435 and 8 AAC 85.154-155).

A Commissioner appeal must be filed within 30 days after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A Commissioner appeal must be in writing and must fully explain your reason for the appeal. You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner appeals *to the Commissioner's Hearing Officer* at the address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present *written argument* to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an *oral argument*. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

**ALASKA DEPARTMENT OF LABOR
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