

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

In the Matter of)	
)	
HOON SON)	OAH No. 21-1033-PUA
_____)	Agency No. P21-301

APPEAL DECISION

Docket Number: P21-301

Hearing Date: June 21, 2021

CLAIMANT APPEARANCES:

Hoon Son

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Hoon Son timely appealed a January 7, 2021 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Division of Employment & Training Services found that the claimant was not eligible for the PUA program because he was not impacted by COVID-19 in a manner that made him a “covered individual” as defined by section 2102 of the Act.

The Department of Labor referred the appeal to the Office of Administrative Hearings on or about June 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 June 21, 2021. Mr. Son appeared telephonically and testified under oath. At its own election, the Division of Employment and Training Services (DETS) provided only written materials for the hearing and was not a live participant.

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

FINDINGS OF FACT

Hoon Son established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 11, 2020. As previously mentioned, DETS determined that the claimant was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program.

Prior to the period relevant to his PUA claim, the claimant worked on Alaska’s North Slope as an “observer/systems operator” processing data from oil field exploration

activities of his employer, SAExploration, an oil field services company. He had worked for this employer, and predecessor firms that were “prior versions of the same company,” since approximately 1997. His work was primarily seasonal, with the season typically running from late December to late April each year.

In early April 2020, the claimant asked for 10 days off in order to fly home to Korea, because his mother had passed away in Korea on April 7, 2020. The employer granted his request and allowed him to fly from the North Slope to Anchorage on April 8, 2020. He was unable to fly to Korea, however, due to COVID-19 travel restrictions. Then when he informed his employer that he could come back to work on the North Slope because he had been unable to leave the country, he was not allowed to come back to work, even though there were at least two weeks left in the season. The claimant testified that this was obviously due to the COVID-19 pandemic, that the employer made a decision right after he had left that they would not be allowing workers to come back to work until the end of the season in order to maintain a quarantine of their workforce at the jobsite.

The claimant testified that at the time of the spring 2020 onset of the pandemic, he had two young school-age children. He explained that, in addition to the death of his mother, another reason he had to leave the North Slope in April 2020 was because his children’s school had closed, and he had to come home to care for them so that his wife could go to work in the Wasilla area. He testified that in a normal year, his wife would have found childcare coverage for the children, but due to the pandemic no such care could be procured. Also, the claimant testified that in a normal year he would typically stay home and care for his children during the summer while his wife worked, if he was not needed at SAExploration during the off-season for field work.

The claimant has not worked for SAExploration since April 2020. In the 2020-2021 season, he was not brought back by the employer to work on the North Slope. He received information from SAExploration that this was due to the season never getting underway as a result of the firm having filed for bankruptcy protection. The claimant testified that he believes the bankruptcy filing was a direct result of the pandemic.

The claimant applied for PUA benefits in late spring of 2020. Apparently DETS initially found him eligible and paid PUA benefits to him for roughly 13 weeks in early to mid-summer of 2020. Then he was approved for regular and extended UI benefits based on his employment with SAExploration in previous years. He was later informed by DETS staff, however, that he had been determined to be ineligible for PUA because he was not impacted by COVID-19 in a manner that made him a “covered individual” under the program. When DETS provided notice of this determination, the claimant was apparently told he would have to repay a significant sum (over \$9,900) of the overpaid benefits. It is not clear whether he was ever given a formal written notice to repay, or whether he has ever been informed of the opportunity to seek a waiver of the repayment obligation, or of the opportunity for a hearing regarding the repayment obligation. In any event, the claimant’s UI benefits were withheld from him in order to

recoup the PUA benefits that DETS believed had been wrongly awarded to him. The claimant exhausted his regular unemployment benefits, then at the time of the hearing he had started receiving additional pandemic emergency unemployment benefits. It was unclear when the renewed payment of these benefits began. However, the claimant has received no PUA benefits since early July 2020.

The January 7, 2021 letter from DETS denying the claimant's PUA eligibility states its reasoning as follows:

It has been determined that you have not been impacted by COVID-19 reasons as of the week ending April 11, 2020 and are therefore not a covered individual. ... You were impacted by COVID-19 due to your place of employment closing on 9/01/20 and being unable to start a new job with SAExploration on 10/01/20, however you quit your job at SAExploration on 4/09/20 for personal reasons. (Exhibit 1, p. 2.)

DETS's rationale for the denial was apparently based on interviews with human resources employees of SAExploration, who stated to DETS staff that the "employee quit due to personal family matters." (Exhibit 1, pp.15-16.)

EXCERPTS OF RELEVANT PROVISIONS OF LAW

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

(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 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

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 him for a claim for regular, extended or PEUC benefits for certain periods during 2020 and 2021, although the precise parameters of these periods is not clear on this record. This decision addresses those periods in 2020 and 2021 when there were gaps in the claimant’s eligibility for regular, extended or PEUC benefits.

As mentioned above, initially DETS apparently found the claimant eligible for PUA, he was paid over \$9900 in PUA benefits, then he was informed by DETS that it had determined he was actually not eligible for PUA, and he was required to pay back the PUA benefits through withholdings from his other unemployment benefits. In reversing its eligibility determination, DETS focused on its view that the claimant had quit his job for personal family reasons rather than losing his employment as a result of the COVID 19 pandemic. (Exhibit 1, p. 2.) The question presented here is whether or not the Division’s decision to reverse its eligibility determination was correct.

DETS’s conclusion that the claimant quit his job for “personal family reasons” was apparently premised on interviews its staff conducted with SAExploration’s HR staff. (Exhibit 1, pp. 15 16.) However, SAExploration staff on the North Slope told DETS that the claimant did not quit, rather his separation was simply due to the fact that it was the end of the season. (Exhibit 1, p. 15.)

The claimant’s testimony was clear and credible that he did not quit his job in April 2020, rather the primary reason for his decision to leave the jobsite in early April 2020 was because his mother had passed away in Korea. The claimant also testified, credibly, that his immediate supervisor approved of him leaving for this purpose. Then, when he attempted to return to work on the North Slope, the employer would not allow him to return due to the pandemic. As a result, the claimant was unable to work for the last two weeks of the 2019 2020 season, which ended on May 2, 2020. (Exhibit 1, p. 19.)

As to the 2020-2021 winter season, the claimant asserted that he was not brought back to work at SAExploration due to its bankruptcy filing, which he believed was directly the result of the COVID-19 pandemic. A large corporation, however, can have a myriad of reasons for filing for bankruptcy protection. While it is possible that the pandemic played a role, no evidence was presented to support the claimant’s belief that this was the case. It would be speculation to conclude that SAExploration did not put him back to work for the 2020 2021 winter season due to its bankruptcy resulting from the pandemic.

Regarding the claimant's argument that his childcare responsibilities should result in eligibility for PUA, he has not established that his need to care for his children while their school was closed prevented him from going to work. There were undoubtedly periods of time when he and his wife normally would have had childcare coverage but as a result of the pandemic they were unable to find such coverage. However, the claimant has not established that he lost a job or was unable to commence a new job due to the need to care for his children. Absent such a linkage, PUA eligibility will not be found.

Based on the foregoing discussion, DETS's decision denying eligibility was correct with one exception – the claimant was prevented from working the last two weeks of the 2019-2020 season as a direct result of the COVID-19 pandemic. If he was not eligible for regular, extended or PEUC benefits during the period starting with the week ending April 25, 2020 through the week ending May 2, 2020, he was eligible for PUA benefits for that period.


To the extent that the net result of this decision does not resolve the issue of the Division's collection of its overpayment claim, the claimant may qualify for a waiver from recoupment. If a waiver is not granted, he must at least be afforded an opportunity for an appeal hearing in which such matters as estoppel could be explored.¹ The present referral does not encompass these issues, and the present decision does not decide them for or against the claimant.

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

DECISION

The determination issued on January 7, 2021 is AFFIRMED in part, and REVERSED as to the period from the week ending April 25, 2020 through the week ending May 2, 2020. The claimant is eligible for PUA benefits for that period in 2020, to the extent that he was not otherwise eligible for regular or extended UI benefits and/or PEUC benefits at that time.

Dated: June 29, 2021,


Andrew M. Lebo
Administrative Law Judge


¹ When DETS seeks repayment, the claimant must be informed of the opportunity to seek a waiver excusing him from repayment, the opportunity for a hearing on that issue, and any other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.b.

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 June 29, 2021, the foregoing decision was served on Hoon Son (by U.S. mail & email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.



Office of Administrative Hearings