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**APPEAL TRIBUNAL DECISION**

**Docket Number:** P20 013 **Hearing Date:** August 10, 2020

 August 27, 2020

**CLAIMANT:**

JEFFERY BUTLER

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Jeffery Butler None

Kelley Schmidt

#### CASE HISTORY

The claimant timely appealed a July 8, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The issue before the Appeal Tribunal is whether the claimant meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

The claimant established a claim for PUA benefits effective March 29, 2020. The claimant was not eligible for regular unemployment benefits because he did not have recent wages on which to base a claim for benefits.

The claimant expected to begin working for a local landscaping business at the end of March 2020, however he did not have a date set to start the work and the person the claimant had talked to about the work was supposed to call with a start date, but never did. The claimant later learned he had not been offered work by the landscaping business he believed he was to work for, and possibly the person who he spoke was a subcontractor and had been intending that the claimant would work for him on a job for the landscaping business. The claimant is not aware if the person who offered him work has a business, but he assumed the work was being offered by the landscaping business.

The claimant was set to have a working interview for a housekeeping position at a hotel on March 14 and 15, 2020, but he was waiting for that employer to call him for the interview and he was never called. The claimant believes both possible jobs fell through due to effects of the COVID-19 pandemic on the respective businesses.

Early in March 2020, the claimant was advised to self-isolate by his medical care provider because he has a serious medical condition that would make him susceptible to complications of the COVID-19 virus. The claimant was forced to disregard this advice, as he needed to work in order to support himself. He was willing to start work at the end of March 2020 and had set up a job interview mid-March.

The claimant and his girlfriend became sick with symptoms of the COVID-19 virus on July 3, 2020 and the claimant tested positive for the virus on July 8, 2020. The claimant was advised to quarantine at that point so he was unable to search for work. The claimant was still experiencing symptoms at the end of July, but a nurse employed by the municipality of Anchorage advised the claimant that he would no longer be contagious at that point and he was no longer required to quarantine.

**STATUTORY PROVISIONS**

**AS 23.20.080 Federal-state cooperation**

(a) In the administration of this chapter, the department shall cooperate, to the extent consistent with this chapter, with the Secretary of Labor, and shall take action through the adoption of regulations, administration methods, and standards that is necessary to obtain for this state and its citizens all advantages available under 26 U.S.C. 3303 and 3304 (Internal Revenue Code) and the Wagner-Peyser Act, as amended. The department shall comply with the regulations of the Secretary of Labor relating to the receipt or expenditure by this state of money granted under these federal laws and shall make reports in the form and containing the information which the Secretary of Labor requires. The department shall comply with the provisions which the Secretary of Labor may from time to time find necessary to assure the correctness and verification of the reports. The department may cooperate with every agency of the United States charged with the administration of an unemployment insurance 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).

**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.

 **CONCLUSION**

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 of Federal program and who is unemployed because one of a list of reasons related to the COVID-19 pandemic. The claimant in this case has not recently worked in covered employment that would qualify him for a claim for regular unemployment benefits.

The claimant held that he was affected by the pandemic as of March 29, 2020 because he expected to start work and he was prevented from starting by the effects of the pandemic.

Unemployment Insurance Guidance Letter 16-20 Attachment 1, issued April 2, 2020 by the U.S. Department of Labor, provides examples of how a person may be a covered individual when the pandemic prevents them from commencing employment:

*g) 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. For example:*

*An individual is unable to reach his or her job because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of the coronavirus or the employer has closed the place of employment.*

*An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.*

The claimant did not have a start date for the landscaping job and ultimately he was not sure which business had offered him the possibility of work. The working interview at the hotel cannot be held to be an offer of work either, since it was an interview to see if the employer wanted to offer the claimant work, and the interview did not take place. The claimant was not scheduled commence work which he was prevented from starting by the COVID-19 pandemic. He does not meet the requirement to be considered a covered individual for the purposes of the PUA Program as of March 29, 2020.

The claimant’s medical advice to self-isolate due to his health condition does not meet the requirements for PUA eligibility, because the claimant was not job-attached and the recommended isolation did not prevent the claimant from getting to the place of work.

The claimant became sick on July 3, 2020 and was diagnosed with COVID-19 on July 8, 2020. Having symptoms of the virus and then a positive test prevented the claimant from searching for work or accepting work from July 3, 2020 through July 31, 2020. The Tribunal finds the claimant was unable to work and unavailable for work because of COVID-19. The claimant meets the requirements to be considered a covered individual at the point he became ill with symptoms of COVID-19 until he was released from quarantine.

**DECISION**

The determination issued on July 8, 2020 is **MODIFIED**. The claimant is **NOT ELIGIBLE** for benefits from the Pandemic Unemployment Assistance (PUA) program for weeks ending April 4, 2020 through June 27, 2020.

The claimant is **ELIGIBLE** for PUA benefits for weeks ending July 5, 2020 through August 1, 2020.

####  APPEAL RIGHTS

This decision is final unless an appeal is filed 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 appeal rights and procedures is enclosed.

Dated and mailed on September 9, 2020.

 Rhonda Buness, Appeals Officer