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**APPEAL TRIBUNAL DECISION**

**Docket Number:** P20 024 **Hearing Date:** August 25, 2020

**CLAIMANT:**

DARCI MILLSPAUGH

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Darci Millspaugh Pamela Frenette

#### CASE HISTORY

The claimant timely appealed a June 30, 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 Pandemic Unemployment Assistance benefits effective March 29, 2020. The Division determined that the claimant was not eligible for regular unemployment benefits because she did not have wages in covered employment on which to base a claim.

The claimant last worked for an employer in 2017. The claimant expected to start waitressing at a restaurant in mid-March. The claimant was not offered work by a representative of the business. A mutual friend of the claimant and the business owner told the claimant she could get the claimant work. No wage was discussed and no start date was provided. The claimant’s friend told her several times that the job was delayed because of the COVID-19 virus and the claimant was never called to work.

Another friend offered the claimant work cleaning the friend’s home in-home esthetician business. The claimant held that the friend offered her work cleaning her home in mid-April. The claimant would be paid $15 per hour for varied hours. The claimant was due to start the work on April 24, 2020, but her friend’s business slowed down as a result of the COVID-19 pandemic. The claimant believes her friend had to close her business on about April 30, 2020 and it did not re-open because the friend accepted work with another business.

The claimant has two young children, but they are cared for by an aunt, so the claimant was not responsible for providing care or home-schooling when the older child’s school closed due to the pandemic.

The claimant has been unable to find other work because local businesses are not hiring, due to effects of the COVID-19 pandemic. The claimant is considering becoming self-employed and has purchased books on opening a business, but she has not invested in a business as of the date of this hearing.

**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 her for a claim for regular unemployment benefits.

The claimant held that she was affected by the pandemic as of March 29, 2020, because she had expected to start working at a restaurant in mid-March, and expected to start cleaning for a friend at the end of April.

Unemployment Insurance Guidance Letter 16-20 Attachment 1, issued on April 2, 2020 by the U.S. Department of Labor, provides examples of how a person may be considered 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 expected to start working at a restaurant in March 2020, but she had no communication with any representative of the business, only a friend of the business owner. No wage was discussed and no date was set to start the work. The Tribunal cannot find that the claimant had a bona fide offer of work which was withdrawn as a result of the COVID-19 pandemic.

The claimant held she was affected by the pandemic when a friend offered work cleaning an in-home business and then withdrew the offer. The claimant offered to provide copies of text messages showing her friend had made her bona fide offer of work and then withdrew the offer directly due to effects of the pandemic. The record was held open for the claimant’s documentation, but none was received.

*The standard of proof in these administrative cases is that the preponderance of evidence must show the facts to have occurred. Thies Com. Dec. 99 1118, August 26, 1999.*

The standard of proof in administrative appeals for unemployment benefits eligibility is that a preponderance of the evidence must support the conclusion. In failing provide the documents, the claimant has not shown that she was offered work which was withdrawn directly due to the COVID-19 pandemic.

The Tribunal cannot find that the claimant meets the definition of a covered individual as described in Section 2102 of the CARES Act.

**DECISION**

The determination issued on June 30, 2020 is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program.

#### 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.

Dated and mailed on September 17, 2020.

Rhonda Buness, Appeals Officer