

**APPEAL TRIBUNAL DECISION**

**Docket Number:** P20 100 **Hearing Date:** November 6, 2020

**CLAIMANT:**

RUSSELL BRANDLOW

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Russell Brandlow Richard Doogan

#### CASE HISTORY

The claimant timely appealed an August 12, 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 he did not have sufficient wages in covered employment on which to base a claim. The claimant only worked during one quarter of 2019 because he was off work recovering from an injury.

The claimant entered a residential treatment program on January 10, 2020. The program allowed residents to leave the facility for work after a certain point. The claimant planned to find work, and a friend offered to help him get work at a restaurant that frequently hired residents from the program. Before any work was offered to the claimant, the facility was locked down starting March 17, 2020 because of the COVID-19 pandemic. Residents were not allowed to leave for work after that date, only for necessary medical appointments.

The claimant completed the program on June 12, 2020. He began searching for work then, but has found it difficult to locate available work, which he attributes to the effects of the COVID-19 pandemic on the local economy.

**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 because he expected to start working, but his residential facility was locked down before he was offered work and he was prevented from searching for or accepting work while he was in the program.

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 in this case expected to start working at a restaurant, but he had not been offered work, and did not have a start date. While the claimant was required to quarantine by his residential program, the Tribunal cannot find that the claimant had a bona fide offer of work which was withdrawn or that he could not get to as a result of the COVID-19 pandemic.

The claimant further held that he could not find work after he was released from the program because of the pandemic’s effects on the economy. The U.S. Department of Labor’s guidance to states on determining eligibility for the Pandemic Unemployment Assistance in Unemployment Insurance Program Letter, Change 2, Attachment 1, holds:

*Eligibility – COVID-19 Related Reasons*

*14. Question: If an individual becomes unemployed for reasons unrelated to COVID-19, and now is unable to find work because businesses have closed or are not hiring due to COVID-19, is he or she eligible for PUA?*

*Answer: No. An individual is only eligible for PUA if the individual is otherwise able to work and available to work but is unemployed, partially unemployed, or unable or unavailable for work for a listed COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Not being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason.*

The claimant did not establish that he is unemployed for reasons related directly to the COVID-19 pandemic. Although the claimant’s difficulty finding work after his release from the program may be affected by the pandemic, the guidance from the federal government holds this is not an identified reason for eligibility.

The Tribunal must conclude the claimant does not meet the definition of a covered individual in Section 2102 of the CARES Act and he is therefore not eligible for PUA benefits.

**DECISION**

The determination issued on August 12, 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 November 16, 2020.

Rhonda Buness, Appeals Officer