

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

In the Matter of)
)
KACEY MAYBERRY) OAH No. 21-0079-PUA
) Agency No. P20 251

APPEAL DECISION

Docket Number: P20 251

Hearing Date: February 16, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Kacey Mayberry

None

CASE HISTORY

The claimant, Kacey Mayberry, timely appealed a September 21, 2020 determination that denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on January 28, 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 February 16, 2021. Ms. Mayberry 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

Ms. Mayberry established a claim for Pandemic Unemployment Assistance benefits effective the week ending May 2, 2020. The Division determined that the claimant was not eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program.

There has been some confusion about the timeline of Ms. Mayberry's employment, created in part by the delayed investigation of her claim, which resulted in some slightly mistaken information from sources whose memories had become imprecise.

However, a careful review of the testimony and contemporaneous text messages reveals the following timeline:

- March 9, 2020 Ms. Mayberry hired by Animal House, a veterinary practice in Fairbanks, to work 30 hours per week as a receptionist.
- March 20, 2020 Last day actually worked. Ms. Mayberry leaves for a prearranged unpaid leave of about 9 days (spent with family in Wasilla).
- ~March 26, 2020 Animal House goes to reduced hours owing to pandemic. Manager may have encouraged Ms. Mayberry to stay in Wasilla.
- April 3, 2020 Ms. Mayberry returns to Fairbanks, offers to return to work April 6. Manager declines because Animal House on reduced hours.
- April 26, 2020 Ms. Mayberry still has no hours. Manager says hopes will get a loan so can bring her back on payroll full time by July. Ms. Mayberry says she must take another job due to lack of work.
- April 30, 2020 Manager offers Ms. Mayberry 6 hours per week, starting May 8.

Ms. Mayberry declined to take the 6 hours per week, because she had an opportunity to make more money as a roofer beginning about May 4. However, a knee injury (unrelated to work) prevented her from starting the roofing job. She looked for other work that she could do with the impaired knee, even taking a training course for school bus drivers before it became clear drivers would not be needed due to Covid-related school closures. She eventually found full-time work in a store on September 18, 2020, and has stayed in that job ever since.

DETS appears to have approved and paid PUA for a period in mid-April roughly (but not perfectly) coinciding with the Animal House layoff after Ms. Mayberry's unpaid leave was completed. Mr. Mayberry was in layoff status from April 6-26.

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—

(l) 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—

* * *

(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; . . .

APPLICATION

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 or Federal program and who is unemployed because one of a list of reasons related to the COVID-19 pandemic. It appears to be undisputed that the claimant’s short work history of working did not represent employment that would qualify her for a claim for regular unemployment benefits.

After being in layoff status with Animal House for three weeks due to COVID-19, Ms. Mayberry quit her job in order to take a job that would give her actual income beginning in May. Negotiations with Animal House continued for two more days after she quit, but Animal House offered her only six hours per week of work for May and June, rather than her previous thirty hours. It was reasonable for Ms. Mayberry to decline to work for Animal House on these terms, given her prospects for a better income from other work. Moreover, it was the partial closure of Animal House due to COVID-19 that led directly to Animal House being unable to offer Ms. Mayberry a return to her prior hours.

As it turned out, Ms. Mayberry could not take up the alternative employment due to an injury, and this meant it took longer than anticipated—until September 18—for her to secure full-time work. But the fact that Ms. Mayberry was in the position of having to look for alternative work was a direct result of the partial closure of Animal House with an 80% reduction in her hours. And that partial closure was a direct result of COVID-19.

The Tribunal finds the claimant meets the definition of a covered individual under subpart (jj), quoted above, beginning the week ending May 2, 2020.

DECISION

The determination issued on September 21, 2020 is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending May 2 and continuing no later than the week ending September 19, 2020. This decision does not affect her previously-paid PUA benefits from April of 2020, the payment of which is supported by the factual record made in this appeal but which were not directly at issue in the appeal.

Dated: February 22, 2021

[Redacted Signature]

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, 2021 the foregoing decision was served on Kacey Mayberry (by mail and by email to [Redacted]). A courtesy copy has been emailed to the UI Appeals Office for recordkeeping.

[Redacted Signature]

Office of Administrative Hearings