

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

In the Matter of)
)
DEVON JACOKES) OAH No. 21-0087-PUA
) Agency No. P20-260
_____)

APPEAL DECISION

Docket Number: P20 260

Hearing Date: February 18, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Devon Jacokes

None

CASE HISTORY

The claimant, Devon Jacokes, timely appealed an October 1, 2020 determination which 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 or about 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 18, 2021. Ms. James 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. Jacokes established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 8, 2020. DETS 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.

Prior to the pandemic, Ms. Jacokes had not been in the labor force for more than a year. In January of 2020, she gave birth to a daughter, her third child. In late February, she began looking for work. She had arranged for her baby to be cared for by Michelle Olson, a friend who operated a small in-home daycare and was willing to take the Jacokes baby for little or no charge.

On June 3, 2020, Ms. Jacokes was hired at Lowes. She began using the Olson daycare. On June 15, 2020, Ms. Olson informed her that she was closing the daycare due to COVID-19. The parents of the two paying children in the daycare were pulling their children out due to concerns about safety during the pandemic, and with the loss of her paying clientele it made sense for Ms. Olson to close the business and get an ordinary job.

Ms. Jacokes had no other practical options for daycare for her baby. She has two other children, who were 13 and 12 in June of 2020, who could apparently be left home alone with the older one in charge, but she did not trust the 13-year-old with unsupervised infant care. Her mother could care for the children, but she worked full time during the day. For paid daycare, she needed subsidized care through Ninestar, a program many daycares do not accept. A local one that did accept Ninestar, Carousel, was suitable but had no openings.

Left suddenly with no daycare for her infant, Ms. Jacokes resigned her job at Lowes. She determined that her only option was to do night shift work, because in a night shift scenario her mother could take the children overnight. Ms. Jacokes began searching for night shift work at fast food restaurants, but was not successful during summer and fall. In December, Ms. Jacokes and two of her children got COVID-19.

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—

* * *

(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; . . .

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, with only two weeks of employment, was ineligible for unemployment benefits.


Ms. Jacokes fits squarely in subpart (dd) of the eligibility criteria, quoted above. She had “primary caregiving responsibility” for her five-month-old baby. Care for the baby was “required for [Ms. Jacokes] to work.” That care was supplied by the Olson in-home daycare, which quite suddenly “closed as a direct result of the COVID-19 public health emergency.” Ms. Jacokes did not have a substitute daycare option for daytime work, so she had to quit her job at Lowes. She did have a night care option for the baby, but she was not immediately able to secure night shift work.

The Tribunal finds the claimant meets the definition of a covered individual beginning the week ending June 20, 2020. There is no basis to find her to be a covered individual prior to that week.

DECISION

The determination issued on October 1, 2020 is **AFFIRMED** with respect to the period prior to and including the week ending June 13, 2020 but is **REVERSED** for the period thereafter. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending June 20, 2020.

Dated: February 23, 2021


Christopher Kennedy
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 24, 2021 the foregoing decision was served on Devon Jacokes (by mail by email to [REDACTED]). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

[REDACTED]
Office of Administrative Hearings