

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

In the Matter of)
)
SONJA HOEPFNER) OAH No. 21-0155-PUA
) Agency No. P20 287 03, PUA
_____)

APPEAL DECISION

Docket Number: P20 287 03

Hearing Date: March 4, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Sonja Hoepfner

None

CASE HISTORY

The claimant Sonja Hoepfner appealed a June 26, 2020 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136, effective the week ending May 16, 2020. The determination found she did not meet the eligibility requirements of the Act.

The Department of Labor referred the appeal to the Office of Administrative Hearings on January 29, 2021. Under the terms of the referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. The procedures at AS 44.64.060 do not apply.

The matter was heard in a recorded hearing on March 4, 2021. Ms. Hoepfner 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.¹

FINDINGS OF FACT

The claimant established a claim for PUA benefits effective the week ending May 16, 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.

¹ DETS Exhibit 1 also identifies an issue regarding whether the claimant's October 12, 2020 appeal of the June 26, 2020 denial was timely filed; however, the same document identifies "PUA backlogged" as the reason for the late appeal date. Accordingly, this decision will treat the claimant's appeal as timely filed.

Ms. Hoepfner's PUA claim in this case is premised on a job she applied for in the spring of 2020 with V.F. Grace in Anchorage. She had an interview for a warehouse "order puller" job on May 7. It is undisputed that V.F. Grace offered her the job at that time, with a start date of the following Monday, May 11, 2020. Ms. Hoepfner testified at the hearing that she accepted the job offer and was planning to use Anchorage's People Mover bus system to get to work. However, she later learned that the People Mover had suspended service due to the COVID-19 pandemic, and she had no other means of transportation. She contacted the employer early on the morning she was scheduled to start work, leaving a message to the effect that she was unable to get to the jobsite and could not start work until the resumption of People Mover service or she was able to find alternate transportation.

Ms. Hoepfner had no further communications with V.F. Grace about the order puller job. She applied for other jobs over the summer of 2020 but remained unemployed. The People Mover restarted in early June 2020, although on a more limited basis; bus capacities were reduced to promote social distancing.

When DETS staff were processing Ms. Hoepfner's PUA claim, they contacted V.F. Grace regarding her May 2020 hiring. According to staff notes, a V.F. Grace manager confirmed that he had offered her the order puller job, but stated "she didn't show up for work" and speculated about the reasons for that, but did not mention transportation problems.

DETS's June 26, 2020 denial letter does not specify why the claimant here was found ineligible. It states only that "you have not been impacted by COVID-19 reasons as of the week ending May 16, 2020 and are therefore not a covered individual." (Exhibit 1, p. 2.)

RELEVANT STATUTORY PROVISIONS

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).

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. The claimant in this case has not recently worked in covered employment that would qualify her for a claim for regular unemployment benefits.

The issue in this case is whether the claimant qualifies as a “covered individual” under the statutory provisions quoted above. She seeks PUA eligibility starting the week ending May 16, 2020 and going forward for the maximum time allowable. She asserts that she was prevented from working by a local mandate that prevented her from being able to get to work.

The CARES Act definition of a covered individual includes a person who “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.” Ms. Hoepfner clearly falls within this category, in that she had a firm job offer to begin work on May 11, she was reliant on public transportation to get to work each day, and she was prevented from getting to the jobsite to “commence employment” because the Anchorage People Mover had suspended its operations due to the COVID-19 pandemic.

However, the claimant’s inability to get to work resulting from the pandemic did not go on indefinitely. The People Mover resumed service in the first week of June 2020. Although it had reduced capacity to promote social distancing, it was nonetheless available to Ms. Hoepfner as a means of transportation to work. She did not reach out to V.F. Grace at that time to see if the order puller job was still available to her, and if so, attempt to use the bus to get to work. Nor did she make a showing at the hearing that she was prevented from getting to any other job due to the reduced capacity of the People Mover. The claimant’s PUA eligibility therefore ended when transportation became available in early June.

The claimant showed that she was unable to commence her employment on May 11, 2020 because she could not get to work due to the COVID-19 pandemic. This qualifies her as a covered individual under the PUA program from the week ending May 16, 2020 through the week ending June 6, 2020.

DECISION

The determination issued on June 26, 2020 is **REVERSED IN PART**. The claimant is eligible for PUA benefits, effective the week ending May 16, 2020 through the week ending June 6, 2020.

Dated: March 18, 2021

[REDACTED]
For Andrew M. Lebo
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 March 18, 2021 the foregoing decision was served on Sonja Hoepfner (by email to [REDACTED]); a copy was emailed to the UI Appeals Office for recordkeeping.

[REDACTED]
Office of Administrative Hearings