

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL BY THE**

In the Matter of)	
)	
ALISHA GREENUP)	OAH No. 21-0305-PUA
<hr style="width:40%; margin-left:0"/>)	Agency No. P20 343

APPEAL DECISION

Docket Number: P20 343

Hearing Date: March 30, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Alisha Greenup
Daphne Humphries

None

CASE HISTORY

Alisha Greenup appealed an October 26, 2020 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The issue for resolution is whether she meets the eligibility requirements of the Act.

FINDINGS OF FACT

In March 2020, Alisha Greenup was the manager of Northern Credit Services (Northern Credit) a private debt collection agency in Ketchikan, Alaska. Ms. Greenup had been a Northern Credit employee for more than 20 years. She was also the corporate secretary. Richard Phillips is the president of Northern Credit. In addition, he is Ms. Greenup's father.

The Alaska government took significant action in response to the Covid-19 outbreak in March 2020. An abbreviated timeline is as follows:

- March 11, 2020. Alaska Governor Michael Dunleavy issued a statewide Covid Disaster Declaration. It was accompanied by a Covid-19 Disaster Certification Memorandum.¹
- March 13, 2020. The Governor issued his first COVID-19 Health Mandate. The mandate suspended and limited public visitation to state institutions. It also suspended school and most school activities.²
- March 16, 2020. Health Mandate 2 closed state operated libraries, archives, and museums to the public and directed all residential school programs to begin the process of sending students to their families and home communities.³

¹ <https://gov.alaska.gov/wp-content/uploads/sites/2/COVID-19-Disaster-Packet.pdf>.

² <https://gov.alaska.gov/wp-content/uploads/sites/2/03132020-COVID-19-Health-Mandate-001.pdf>.

³ <https://gov.alaska.gov/wp-content/uploads/sites/2/03.16.20-COVID-19-Health-Mandate-002.pdf>. An exception was made for individuals in "critical infrastructure" which is different from "essential business."

- March 17, 2020. Health Mandate 3 banned all public dining.⁴
- March 23, 2020. Health Mandate 10 directed: “All people arriving in Alaska, whether resident, worker or visitor, are required to self-quarantine for 14 days and monitor for illness.”⁵

On March 21, 2020, the Ketchikan Gateway Borough, City of Ketchikan and City of Saxman issued a Joint Proclamation Under State of Emergency to Shelter in Place (Joint Proclamation).⁶ The Joint Proclamation order urged closure of all non-essential business. Non-essential business was not defined in the order.⁷ Businesses were also requested to follow all health mandates issued by Governor Dunleavy, the Alaska Department of Health and Social Services (DHSS), and the Center for Disease Control (CDC).

Thus, the week of March 22, 2020, Ms. Greenup sought to implement safety protocols for Northern Credit. She did so in a swiftly developing situation with complicated government advice. At the time she did so, she was aware of the Ketchikan Joint Proclamation and Alaska Health Mandate 10 requiring 14-day quarantine for all travelers, including Alaskan residents.

On March 27, 2020, Richard Phillips flew back to Ketchikan from outside Alaska where he had been attending NASCAR races. He came to the Northern Credit office. Ms. Greenup reminded him of the mandatory, statewide 14-day quarantine, expecting him to voluntarily leave. He scoffed and told her COVID-19 was “a hoax” so he would not comply with the Health Mandates or the Joint Proclamation.

Ms. Greenup told Mr. Phillips that as a business Northern Credit was required to follow the law regardless of his personal preferences. Mr. Phillips told her that he would not require the business to follow the health directives, he would return to work without quarantining, and he would not wear a mask to facilitate social distancing in the office. When Ms. Greenup attempted to argue with him, she was shocked when he told her to “get out now.” She asked, “are you firing me?” To which Mr. Phillips replied by repeating the order for her to leave the premises of Northern Credit immediately. Most of this conversation occurred in a public area of the office in front of other employees.

Ms. Greenup cleared her area and left her job.

Later in the evening of March 27, 2020, at a televised news conference, the Governor issued Health Mandate 11.⁸ That mandate stated “all persons in Alaska, except for

⁴ <https://gov.alaska.gov/wp-content/uploads/sites/2/03172020-SOA-COVID-19-Health-Mandate-003.pdf>

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<https://ready.alaska.gov/Covid19/Documents/UC/03.25.2020%20Press%20Release%20-%20Critical%20Infrastructure%20COVID-19%20Plan%20Submission%20Instructions%200020-003.pdf>

⁶ <https://www.kgbak.us/DocumentCenter/View/7210/03212020---Joint-Proclamation---Stay-in-Place->

⁷ *Id.*

⁸ <https://livestream.com/govdunleavy/events/9060540>

those engaged in essential health care services, public government services, and essential business activities, are mandated to remain at their place of residence and practice social distancing.”⁹

The Alaska Essential Services and Critical Workforce Infrastructure Order (Formerly “Attachment A”)(Infrastructure Order) was released at the same news conference.¹⁰ The Infrastructure Order mandated “[a]ll businesses within Alaska, except those specifically exempted below, are required to cease all activities at facilities located within the state.” The exemptions included those identified as “essential services” and “critical infrastructure.” Certain portions of the Financial Services sector were exempt as essential services, but they were defined in general rather than specific terms.¹¹ The order incorporated a Memorandum on Identification of Essential Critical Infrastructure Workers during COVID-19 Response issued by the Cybersecurity and Infrastructure Security Agency of the United States Homeland Security on March 19, 2020.¹² That memorandum did not specifically identify privately owned debt collection agencies, although “workers who are needed to provide, process, and maintain systems for processing, verification, and recording of financial transactions and services” were broadly listed.

The Infrastructure Order required exempted businesses to take all reasonable precautions feasible to ensure the health of their employees, including compliance with social distancing for both employees and members of the public. “Social Distancing Requirements” included maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer containing at least 60% alcohol, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

Ms. Greenup filed a request for regular unemployment after March 27, 2020. Her request was denied because Northern Credit did not make unemployment contributions for her, possibly treating her as excluded from coverage because she was an officer of the corporation. Corporate officers are not necessarily covered employees, although when the officer performs a separate paid position within the company,

⁹ [https://gov.alaska.gov/newsroom/2020/03/27/governor-issues-covid-19-health-mandates-on-social-distancing-limiting-intrastate-travel-2./](https://gov.alaska.gov/newsroom/2020/03/27/governor-issues-covid-19-health-mandates-on-social-distancing-limiting-intrastate-travel-2/)

¹⁰ This order has been subsequently amended on repeated occasions. A copy of the order in its original form can be found at <https://www.cityofseward.us/home/showpublisheddocument?id=1802>.

The amended order is available at , <https://gov.alaska.gov/wp-content/uploads/sites/2/041320202-COVID-19-Health-Mandate-010-Attachment-A.pdf>.

¹¹ Infrastructure Order II(b)(iii)(“Financial services sector,” which includes workers who are needed to process and maintain systems for processing financial transactions and services, such as payment, clearing and settlement services, wholesale funding, insurance services, and capital markets activities; to provide consumer access to banking and lending services, including ATMs, movement of currency (e.g. armored cash carriers); support financial operations, such as those staffing data and security operations centers; appraisals and titling; and, key third-party providers who deliver core services.

¹² Infrastructure Order Sec. IV(a).

unemployment coverage may be required.¹³ Thus, the lack of unemployment coverage was a surprise to Ms. Greenup.

Ms. Greenup filed a claim for Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136, on September 22, 2020, after she was informed by the Department of Labor that regular unemployment coverage was not available for her. On October 26, 2020, the Division issued Ms. Greenup a letter denying her request. Review of the Division file indicates the denial was likely based on representations from Mr. Phillips that Ms. Greenup voluntarily quit her job to spend more time with her boyfriend and Northern Credit complied with governing Health Mandates. Ms. Greenup appealed on October 27, 2020.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings. 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 recorded hearing took place on March 30, 2021. Ms. Greenup testified under oath. She also called a witness, Daphne Humphries. At its own election, the Division of Employment and Training Services (Division) provided only written materials for the hearing and was not a live participant

Ms. Greenup testified to the events leading up to her termination and her continued distress at her father's behavior, both his cavalier attitude regarding the pandemic and the fact he fired her over a dispute that she now understands was political. Mr. Phillips called her approximately a month after March 27, 2020, asking when she was returning to Northern Credit. When Ms. Greenup asked if he would follow Covid precautions, Mr. Phillips hung up on her.

At the hearing Ms. Greenup was aware of Mr. Phillips's prior statement to the Division. She responded to his representations by testifying she did not need to leave her job to spend time with her boyfriend because she had five weeks of vacation and one week of sick leave accrued as of March 22, 2020. She could have spent time with her boyfriend without quitting. Nor did she have any other reason to leave Northern Credit.

Daphne Humphries is a Northern Credit employee who observed the conversation between Ms. Greenup and Mr. Phillips on March 27, 2020. Ms. Humphries testified that Mr. Phillips returned from a trip out of state. He came to the office. Mr. Phillips and Ms. Greenup had an argument about Covid protocols and the need for him to quarantine for 14 days. Mr. Phillips told Ms. Greenup to "get out." Ms. Humphries interpreted the interaction as Ms. Greenup being fired.

Ms. Humphries also testified that, contrary to the information the Division obtained from Mr. Phillips, Northern Credit followed very few pandemic safety protocols. Mr. Phillips did not quarantine. The company did not provide protective gear, masks, or

¹³ Compare AS 23.20.525(a)(19)(c) with AS 23.20.525(a)(1).

sanitizer. No changes to the layout of the office or distance between employees to facilitate social distancing was made. The only safety precaution was to lock the entry door and require members of the public to telephone to be let into the office.

Ms. Greenup has not returned to work at Northern Credit, but she has actively looked for work in Ketchikan. Ketchikan has been deeply impacted by the pandemic and corresponding loss of tourism. A hiring freeze is in place for all state and local government jobs, and the private sector is constricted

STATUTORY PROVISIONS

Alaska Regulation 8 AAC 85.151 Filing of Appeals

(a) An interested party may file an oral or written appeal from a determination of redetermination issued under AS 23.20 and this chapter. The appeal may be filed in person, by mail, or by telephone. An oral or written protest indicating a desire to appeal is an appeal to a referee or the commissioner.

(b) An appeal from a determination or redetermination on a claim for benefits may be filed with a referee or at any office of the division. An appeal must be filed no later than 30 days after the determination or redetermination is personally delivered to the appellant or no later than 30 days after the date the determination or redetermination is mailed to the appellant's last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. However, the 30-day period may be extended for a reasonable time if the appellant shows that the failure to file within this period was the result of circumstances beyond the appellant's control.

The Division denied Ms. Greenup's claim on October 26, 2020. She appealed on October 27, 2020. The appeal was timely.

The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law. A nearly \$2 trillion economic stimulus package, the Act provides an estimated \$260 billion in enhanced and expanded unemployment insurance (UI) to millions of workers throughout the country who are being furloughed, laid off, or finding themselves without work through no fault of their own because of the COVID-19 pandemic and our public health response to it.¹⁴

The CARES Act creates three new UI programs: Pandemic Unemployment Compensation (PUC), Pandemic Emergency Unemployment Compensation, (PEUC) and Pandemic Unemployment Assistance (PUA). PUA provides emergency unemployment

¹⁴ CARES Act, S. 3548, 116th Cong. (2002).

assistance to workers who are left out of regular state UI or who have exhausted their state UI benefits(including any Extended Benefits that might become available in the future).¹⁵ The Alaska Department of Labor was tasked with implementing the CARES Act and related Federal law to obtain for “this state and its citizens all advantages available.”¹⁶

To be eligible, PUA applicants must establish that they are (1) partially or fully unemployed, or (2) unable and unavailable to work due to one or more of the eleven circumstances set out in the ACT.¹⁷ Workers are also not eligible for PUA if they can either telework with pay or are receiving paid sick days or paid leave.¹⁸

¹⁵ *Id.*

¹⁶ AS 23.20.080.

¹⁷ CARES Act, Pub. L .No. 116-136 § 2102(a)(3)(A)(1)(I)(aa)-(kk). 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).

¹⁸ CARES Act, Pub. L .No. 116-136 § 2102(a)(3)(B).

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 does not qualify for other unemployment benefits

Thus, the only issue is whether Ms. Greenup is unemployed for one of the reasons listed within the Act. A claimant is a covered individual under § 201(a)(3)(A)(ii)(I)(ii) if the individual has to quit his or her job as a direct result of COVID-19. The CARES Act definition of “has to quit” is broadly defined. “Generally, an employee ‘has to quit’ within the meaning of this Section when ceasing employment “is an involuntary decision compelled by the circumstances identified in this Section.”¹⁹

In February 2021 the definition of a “covered individual” under § 201(a)(3)(A)(ii)(I)(ii) was expanded in UIPL No. 16-20, Change 2, and Section C.1.kk. of Attachment I to UIPL No. 16-20, Change 4. The expansion is retroactive to the beginning of the PUA program. The expansion made it clear that covered individuals include “those who refuse to return to work that is unsafe or accept an offer of new work that is unsafe.”

In this case Northern Credit fired Ms. Greenup on March 27, 2020. The firing was prompted by her attempt to enforce work safety requirements, Alaska Health Mandate 10, and the Ketchikan Joint Proclamation. However, although her termination was prompted by reasons related to the pandemic, as a matter of law it was not a direct result of the pandemic. The firing was the result of Mr. Phillips’ personal ire and disagreement with occupational safety rules. It is probable that a large number of employees have been fired or harassed for seeking COVID-related worker protection. However, until Congress or the Administrator act to address that population, it does not fall within any of the circumstances identified § 201(a)(3)(A)(ii)(I)(aa)-(kk). Mr. Phillips’ motivation on March 27, 2020 may provide Ms. Greenup with the basis for a lawsuit, but it does not trigger coverage under the CARES Act.

However, Mr. Phillip’s subsequent telephone call to Ms. Greenup was an attempt to rescind her firing. Ms. Greenup’s refusal to return to work in the absences of assurance that the law and safety protocols would be followed acts a valid job quit for purposes of § 201(a)(3)(A)(ii)(I)(ii) as expanded. Therefore, as of the telephone call at the end of April 2020, she was a covered individual entitled to PUA benefits.

DECISION

The determination issued on October 16, 2020 is **REVERSED**.

¹⁹ Unemployment Insurance Program Letter (UIPL) No. 16-20, Change 5, dated February 25, 2021.

Ms. Greenup is eligible for PUA benefits beginning the week ending in April 24, 2020.

Dated and mailed on April 5, 2021.

Signed _____
Carmen E. Clark
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 April 5, 2021 the foregoing decision was served on Alisha Greenup (by mail). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

Signed _____
Office of Administrative Hearings