

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

In the Matter of)
)
MOLLY NAPOKA) OAH No. 21-0330-PUA
) Agency No. P20 353
_____)

APPEAL DECISION

Docket Number: P20- 353

Hearing Date: April 21, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Molly Napoka

None

CASE HISTORY

The claimant, Molly Napoka, timely appealed an October 16, 2020 determination with an issue date of October 19, 2020, which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136.

The Department of Labor referred the appeal to the Office of Administrative Hearings in February 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 issue before the ALJ is whether the claimant is a “covered individual” as defined by the Act and therefore eligible for PUA benefits.

FINDINGS OF FACT

The claimant established a claim for PUA benefits effective the week ending March 21, 2020. Ms. Napoka had worked for a Rural Cap Head Start program as a substitute teacher aide for several years. She would be called in for one or two weeks at a time when a substitute was needed. Ms. Napoka’s recollection is that she worked approximately six to eight weeks in 2019, but not in 2020. According to a phone interview with Rural Cap’s bookkeeper, Ms. Napoka did work twice in 2020; once in January and again in March of that year. (Exhibit 1, page 10).

In the first part of the year, Ms. Napoka also started to have health problems. She would get dizzy and need to lie down if she was standing or sitting for too long. She informed Rural Cap that she would not be able to work until her health improved. Her testimony at the hearing is consistent with the notes of an October 7, 2020 phone conversation with the Division:

10.07.20 Called client 11:00a [REDACTED]

Q: Are you still employed by RuralCap?

A: Not employed at this time

Q: And why are you not employed by them anymore?

A: Due to my health

Q: Do your health issues impede your ability to work?

A: Have a hard time sitting down and standing up, I think it's my old age.

Q: Have your health issues affected ability to work before?

A: I have arthritis and an infection and I'm still taking pills for it. So I'm waiting for my doctor to let me know if I can work

Q: Did you quit RuralCap because of your health issues?

A: I told them to lay me off until I feel better

Exhibit 1, page 10.

Ms. Napoka stopped working at the same time that schools and other childcare programs were closed because of COVID, but her lack of work was not related to the COVID-19 pandemic. She was unable to work because of her health and therefore was not able and available to work.

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 [italics added]*

* * *

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency . . .

APPLICATION

Because of her health problems in March of 2020, Molly Napoka was not able and available to work when schools and childcare centers closed due to the COVID pandemic. Her inability to work was not the result of the pandemic. As such, she is not a covered individual under the CARES Act of 2020.

The Tribunal finds the claimant does not meet the definition of a covered individual for the purposes of receiving benefits from the PUA program.

DECISION

The determination made on October 16, 2020, and issued on October 19, 2020, is **AFFIRMED**.

Dated: April 22, 2021

Signed

Jeffrey A. Friedman
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 22, 2021 the foregoing decision was served on Molly Napoka (by mail). A copy was emailed to the UI Appeals Office for recordkeeping.

Signed

Office of Administrative Hearings