

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

In the Matter of)

SHABAN SELIMI)

) OAH No. 21-0686-PUA
) Agency No. P21-058

APPEAL DECISION

Docket Number: P21-058

Hearing Date: May 6, 2021

Claimant Appearances:

DETS Appearances:

Shaban Selimi

None

CASE HISTORY

The claimant established a claim for Pandemic Unemployment Assistance (PUA) benefits effective the week ending March 7, 2020. The Division of Employment and Training Services (DETS) determined the claimant was not a “covered individual” eligible for PUA benefits and issued a Notice of the determination to the claimant December 1, 2020 [REDACTED]. The determination was timely appealed December 28, 2020.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on April 1, 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.

This appeal was heard in a recorded hearing on May 6, 2021. The DETS chose to not to appear and provided only written materials for the hearing. Mr. Shaban testified under oath with the assistance of an independent Albanian interpreter¹ but presented no other witnesses.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act from the week ending March 7, 2020.

FINDINGS OF FACT

Mr. Selimi is a cab driver for Yellow Cab. His wife and his father, who both live with him, are diabetic. The family left Alaska and moved to Illinois October 8, 2020.

Mr. Selimi stated he was too sick to work for two weeks beginning March 7, 2020. He did not go to the hospital or a health clinic. He did not see a physician or other health practitioner. Mr. Selimi states that as a result of this illness, he did not drive, so he didn’t earn any money. As a result, he didn’t have the \$950 rental fee to pay the cab

¹ The tribunal thanks Language Link interpreter Nic ID 9003 for his capable assistance.

company, and they repossessed his equipment. This meant he could no longer drive for Yellow Cab.

Mr. Selimi testified that his wife and father are diabetic, and he was unable to work because he feared for their lives if he brought home the coronavirus from his work. However, again, Mr. Selimi produced no evidence that his wife's or father's health care provider advised *him* to self-quarantine to avoid exposing them to COVID-19 as early as March 7, 2020.

Mr. Selimi testified that he went to the emergency room at Providence Hospital twice in June 2020 with very high blood pressure and a fever. He stated he was tested for the coronavirus, but the test was negative. He said that a doctor at the emergency department told him to stay home and not to expose his family. He does not know the doctor's name, but he described the doctor as a white man, thin, about 40-45 years old. He did not submit any record of this advice. Mr. Selimi testified he had a "procedure" on his spine the following month and was in bed for 48 hours afterwards, but he did not relate this event to the coronavirus.

Mr. Selimi left the state with his family in October 2020.

EXCERPTS OF RELEVANT LAW

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

(a) DEFINITIONS.—In this section:

...

(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;

...

(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;

. . .

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(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);

APPLICATION

Mr. Selimi is a cab driver who operates as an independent contractor. While this would disqualify him from regular unemployment benefits, this does not disqualify him from eligibility for PUA benefits. Sec. 2102(a)(3)(A)(ii)(II).

The tribunal acknowledges Mr. Selimi's description of his illness in March 2020. Unfortunately, there is no evidence that Mr. Selimi's illness in March 2020 was COVID-19. He did not get tested and he did not see a health care provider. Therefore, the tribunal cannot conclude the loss of his work for Yellow Cab was directly caused by COVID-19. He is not a covered individual as defined by Sec. 2102(a)(3)(A)(ii)(I)(aa) or Sec. 2102 (a)(3)(A)(ii)(I)(ii) from the week ending March 7, 2020.

Mr. Selimi offered as support for his claim that his wife and father are diabetic, and he was unable to work because he feared for their lives if he brought home the coronavirus from his work. However, again, Mr. Selimi produced no evidence that a health care provider advised *him* to self-quarantine as early as March 7, 2020, either for his own care or for that of his family. The tribunal concludes he is not a covered individual as defined under Sec. 2102(a)(3)(A)(ii)(I)(ff).

Mr. Selimi testified that he went to the emergency room at Providence Hospital twice in June 2020 with very high blood pressure and a fever, which he claims were symptoms of COVID-19.² He claims he was tested for the coronavirus, but the test was negative. The tribunal agrees that Mr. Selimi has presented testimony that supports eligibility for PUA benefits under Sec. 2102(a)(3)(A)(ii)(I)(aa) because he was seeking medical diagnosis for coronavirus symptoms. The tribunal concludes that he is eligible for

² The US Center for Disease Prevention and Control guidance on symptom screening states that "People with COVID-19 have had a wide range of symptoms reported – ranging from mild symptoms to severe illness. Symptoms may appear 2-14 days after exposure to the virus. Anyone can have mild to severe symptoms. People with these symptoms may have COVID-19: Fever or chills. . . ." <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last updated Feb. 22, 2021).

PUA benefits for the week ending June 20, 2020 and the week ending June 27, 2020 as a person with COVID-19 symptoms seeking medical diagnosis.

In response to questioning by the ALJ, Mr. Selimi testified that a doctor at the emergency department told him to stay home and not to expose his family. If Mr. Selimi were ill with symptoms, it is expected that he would be told to self-isolate for a period (stay home and not expose his family to *himself*). However, Mr. Selimi did not submit any record of this advice, nor did he say how *long* he was advised to stay home. The tribunal finds this testimony of a vague recollection of what an unnamed doctor told him insufficient to support a claim for PUA benefits under Sec. 2102 Sec. 2102(a)(3)(A)(ii)(I)(ff) from March 7, 2020.

DECISION

The determination issued December 1, 2020 in [REDACTED] is REVERSED in part. Mr. Selimi is eligible for PUA benefits for the two weeks ending June 20, 2020 and June 27, 2020. In all other respects the determination is AFFIRMED.

Dated: May 11, 2021.

[REDACTED]

For: Kristin Knudsen
Administrative Law Judge

APPEAL PROCEDURE

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 May 11, 2021 the foregoing decision was served on Shaban Selimi (by mail and by email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

[REDACTED]
Office of Administrative Hearings