

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

In the Matter of)
)
NATHAN WOLF) OAH No. 21-0761-PUA
) Agency No. P21 080
_____)

APPEAL DECISION

Docket Number: P21 080

Hearing Date: June 11, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Nathan Wolf

None

CASE HISTORY

The claimant, Nathan Wolf timely appealed a December 30, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The determination found that he did not meet the eligibility requirements of the Act.

The Department of Labor 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.

The matter was heard in a recorded hearing on June 11, 2021. Mr. Wolf 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

Nathan Wolf established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 25, 2020. The Division determined that the claimant was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program.

In 2019 the claimant was working in Thailand as an English teacher. In September he was given the option to renew his employment contract for an additional year, starting on April 1, 2020. In December 2019 Mr. Wolf decided not to commit to teaching an additional year, deciding instead to return home to Juneau, Alaska for the summer.

He planned to work a seasonal job, as well as help with the care of his father, who has Parkinson's disease.

At the beginning of 2020 the claimant began submitting applications for various seasonal positions in Juneau. At the same time, however, the spread of the global COVID-19 pandemic began to increase, and his job hunt became more complicated. He eventually attempted to renew his teaching contract with the school where he was teaching in Thailand, but this was no longer an option as teaching protocols around the world became more uncertain.

On March 11, 2020 Mr. Wolf received an email from Coastal Helicopters in Juneau offering him a job as a Lead Tour Attendant with an hourly wage of \$13.00. No other details were provided. He was asked to let them know if he would be accepting the position and then "they would proceed from there." The claimant responded by asking for an additional week to make a final decision. He testified that he was waiting on responses from other job prospects, none of which materialized. On March 20, 2020 he flew home to Alaska.

The next time Mr. Wolf communicated with Coastal Helicopters was on March 27, 2020. He sent an email asking Coastal about their "plans for the summer," but did not indicate if he was accepting the job offer.

Shortly thereafter the cruise industry came to a halt due to the COVID-19 pandemic, and the Canadian borders closed. Coastal withdrew the job offer, as it became clear that there would be little to no tourism in Juneau the summer of 2020.

On July 6, 2020 the claimant accepted a position with the Civilian Conservation Corps in Juneau, where he worked for the remainder of the summer. When the snow began falling he returned to his teaching position in Thailand, the job he still holds to date.

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—

(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 of one or more reasons related to the COVID-19 pandemic. It is undisputed that the claimant’s recent work history did not qualify him for a claim for regular or other unemployment benefits in 2020.

The Division denied the claimant’s application for PUA benefits on the ground that he “did not accept the job for reasons unrelated to COVID-19.” It appears undisputed in this case that the operations of Coastal Helicopters were impacted in the spring of 2020 by the COVID-19 pandemic, and as a result the claimant’s job offer was withdrawn. Therefore, Mr. Wolf’s employment status was affected by the pandemic.

However, in order to qualify for PUA benefits, a claimant must meet the criteria of one of the specific eligibility categories listed in the statute. Here, Mr. Wolf never accepted the offer with Coastal Helicopters as he was still hopeful about getting a job offer more aligned with his personal interests. He did not have a prior relationship with Coastal or a history of working for this employer that might lend support to a finding of an implied employment agreement. Under these circumstances, it cannot be said that the claimant fell within the eligibility category of 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 pandemic.

Receiving – but not accepting – a job offer is not equivalent to having a job. Therefore, the claimant did not meet the definition of “covered individual” under (gg) of the statutory provisions quoted above.

Mr. Wolf seems to have been asked to repay about \$8000 in erroneously-paid PUA benefits. The record does not indicate that the Division has informed Mr. Wolf of the opportunity to seek a waiver, the opportunity for a hearing, or other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.b.

Although Mr. Wolf has never been eligible for PUA benefits, it is possible that he could qualify for a waiver from recoupment. It is also possible that if a waiver or offset were not granted, he must be afforded an appeal hearing in which such matters as estoppel

and hardship could be explored. The present referral does not encompass these issues, and the present decision does not decide them for or against Mr. Wolf.

The Division has advised that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options, including a waiver, that may be available, Mr. Wolf can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

DECISION

The determination issued on December 30, 2020 is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending April 25, 2020.

Dated: June 14, 2021



Danika B. Swanson
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 June 28, 2021, the foregoing decision was served on Nathan Wolf (by mail/email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.



Office of Administrative Hearings