

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

In the Matter of )

CHRISTA L. JOHN )

OAH No. 21-0702-PUA  
Agency No. P21-163

**APPEAL DECISION**

**Docket Number:** P21-163

**Hearing Date:** May 13, 2020

**Claimant Appearances:**

**DETS Appearances:**

Christa L. John

None

**CASE HISTORY**

The claimant established a claim for Pandemic Unemployment Assistance (PUA) benefits effective the week ending February 8, 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 January 6, 2021 [REDACTED]. The determination was timely appealed January 13, 2021.

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 13, 2021. The DETS chose to not to appear and provided only written materials for the hearing. Ms. John testified under oath but presented no other witnesses. The record was held open until May 17, 2021 to allow her to present other documents.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act from the week ending February 8, 2020.

**FINDINGS OF FACT**

Ms. John’s related a somewhat confusing account of her interactions with the DETS. Without the DETS representative present, or documentary evidence, the ALJ must rely on Ms. John’s account where it is internally consistent and reliable.

Ms. John stated she was employed by “CVS” in Costco, handing out food samples to Costco customers. She was not precisely clear on the date, but she said that after the

Governor's health mandate in March 2020,<sup>1</sup> she was let go because they could no longer hand out food samples in Costco. She stated she didn't think she had enough weeks of employment at this job to get unemployment, so she didn't apply until her former supervisor urged her to do so. When she applied, she was found ineligible for regular unemployment compensation, but she was found eligible for PUA benefits.

In addition, Ms. John had, at that time, eight children of her own living with her. They ranged in age from one student in middle school (Ryan Middle School), four students in elementary school (Anne Wien Elementary), and two children under five. A ninth child was born March 30, 2021. When the governor ordered public and private schools closed March 20, 2020,<sup>2</sup> she was required to stay home to care for her children and assist them with home schooling.

According to its public website, on August 20, 2020 the Fairbanks North Star Borough School District began a hybrid school schedule, bringing children to school for in-person classes two times per week. In November 2020, Ms. John found a day care opening for her two youngest children at THRIVE Daycare. On January 12, 2021, the District began a five-day week of in-person classroom instruction. In February 2021, Ms. John learned that her two youngest children had been exposed to COVID-19 at their daycare by a caregiver. Ms. John was not notified by the daycare until she arrived with the children and was told they could not enter due to their exposure. This angered Ms. John so that she removed the youngest children from the daycare and has been caring for them herself, with their infant sibling.

Finally, Ms. John stated that she had COVID-19 "around Halloween". This was supported by a copy of a positive test result from November 2, 2020, requiring her to self-isolate through November 10, 2020.

Ms. John related that at different points in 2020, she was found to be eligible for unemployment compensation, so her PUA benefits were stopped and her unemployment benefits would be withheld to repay overpayments of PUA benefits. Ms. John felt that she was misled because she had applied for the benefits she was told to apply for, denied unemployment (as she expected), then seemingly randomly found eligible for unemployment compensation, only to have it withheld due to payment of PUA benefits.

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<sup>1</sup> COVID-19 Health Mandate 3.1, issued March 17, 2020, by Governor Mike Dunleavy, closed all food and beverage kiosks or other establishments serving food or beverages to all but delivery options through April 1, 2020. The impact of COVID-19 Health Mandate 11, issued March 27, 2020, effective through April 11, 2020, and COVID-19 Health Mandate 16-E, issued April 22, 2020, required measures inconsistent with the ability to distribute food samples for open consumption in Costco.

<sup>2</sup> COVID-19 Health Mandate 8.1, issued March 20, 2020, by Governor Mike Dunleavy, closed all public and private schools through May 1, 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;

(bb) a member of the individual’s household 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;

...

(jj) the individual’s place of employment is closed as a direct result of the COVID– 19 public health emergency;

...

## APPLICATION

An initial determination in all PUA benefit claims must be that the claimant is not eligible for regular unemployment compensation, extended unemployment compensation, or pandemic emergency unemployment compensation under Section 2107 of the Cares Act. The problem presented in this case is that the record supplied by the DETS does not demonstrate precisely when Ms. John was, or was not, found eligible for regular unemployment, extended unemployment, or pandemic emergency

unemployment compensation. The lack of a complete record means that the ALJ must ultimately remand this case for further fact-finding. To aid the DETS, however, the ALJ makes the following determinations.

Ms. John's job as a sample distributor in Costco was clearly stopped March 17, 2020 as a result of the Governor's COVID-19 Health Mandate. Her employer (either CVS, the sample kiosk contractor, or Costco) determined it could not operate within the subsequent mandates and closed the kiosks. If Ms. John was NOT eligible for regular unemployment compensation, extended unemployment compensation, or pandemic emergency unemployment compensation, she was clearly eligible for PUA benefits as a covered individual under Section 2102(a)(3)(A)(ii)(I)(jj) from the week ending March 21, 2020 until otherwise ineligible.

Ms. John was required to care for her four school-aged children and assist them in distance learning, a task her mother was unable to undertake, after public schools were closed by the Governor's COVID-19 Health Mandate 8.1, issued March 20, 2020. The Governor's COVID-19 Health Mandates are matters of public record and effective as a matter of law; the claimant should not be required to show that an Alaska school district complied with the Governor's order. Although hybrid learning began at Anne Wien school on August 20, 2020, it was, as the name implies, a mixture of distance and in-person learning, and Ms. John was still needed to assist the children who were not in class with online lessons. If Ms. John was NOT eligible for regular unemployment compensation, extended unemployment compensation, or pandemic emergency unemployment compensation, she was clearly eligible for PUA benefits as a covered individual under Section 2102(a)(3)(A)(ii)(I)(dd) from the week ending March 21, 2020 through the week ending May 2, 2020, and again from the week ending August 22, 2020 through the week ending January 16, 2021.

Finally, Ms. John produced evidence of COVID-19 infection in November 2020, requiring self-isolation ending November 10, 2020. However, her children's exposure to the ill parent would have triggered a 14-day quarantine period beginning November 11, 2020 (the day after the last day of exposure to a contagious individual) and continuing through November 24, 2020 assuming none of the children contracted the virus.<sup>3</sup> If Ms. John was NOT eligible for regular unemployment compensation, extended unemployment compensation, or pandemic emergency unemployment compensation, she was clearly eligible for PUA benefits as a covered individual under Section 2102(a)(3)(A)(ii)(I)(aa), (bb), and (dd) from the week ending November 7, 2020 through the week ending November 28, 2020.

In short, the reasons given by the DETS for its determination that Ms. John was not a "covered individual", ("You do not meet the eligibility requirements to qualify for

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<sup>3</sup> Until amended by COVID-19 Response and Recovery Health Advisory No. 1, issued February 14, 2021, the advice was to quarantine close contacts for 14 days following last day of exposure. The amendment shortened the period of quarantine of asymptomatic persons to 10 days following last day of exposure.

benefits under the Pandemic Unemployment Assistance program.” (Ex. 1, pg. 2) or that “There is not enough information to allow.” (Ex. 1, pg. 20)), are not supported by the record and the law.

### **DECISION**

The determination of January 6, 2021, found in [REDACTED] is REVERSED and the case is REMANDED for further fact-finding and an accounting by DETS of those periods if, and when, Ms. John was eligible for regular unemployment compensation, extended unemployment compensation, or pandemic emergency unemployment compensation and for those periods she was eligible for PUA benefits as provided above.

Dated: May 18, 2021.

[REDACTED]

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 18, 2021 the foregoing decision was served on Christa John (by mail and by email to: [REDACTED]). A courtesy copy was emailed to the UI Support Team and the UI Appeals Office.

[REDACTED]  
Office of Administrative Hearings