

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

In the Matter of)

LINDSAY LALONDE)

) OAH No. 21-0864-PUA
) Agency No. P21-316

APPEAL DECISION

Docket Number: P21-316

Hearing Date: June 2, 2021

Claimant Appearances:

DETS Appearances:

Lindsay LaLonde

None

CASE HISTORY

The claimant established a claim for Pandemic Unemployment Assistance (PUA) benefits effective the week ending August 1, 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 13, 2021 [REDACTED]. The determination was timely appealed January 21, 2021.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on May 3, 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 June 2, 2021. The DETS chose to not to appear and provided only written materials for the hearing. Ms. LaLonde testified under oath but presented no other witnesses. The record remained open until 5:00 p.m. Friday, June 4, 2021 to allow receipt of supporting documents.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act from the week ending August 1, 2021.

FINDINGS OF FACT

Ms. Lalonde testified that she was scheduled to start work for John Meece at his new business, Dirty North Detailing, in Fairbanks, Alaska on August 1, 2020. The business is a mobile auto washing and cleaning service, that goes to people’s houses and work sites to do the service. She testified that he had interviewed her in March, but she informed him she was unavailable until August. She understood the job was only part-time, 20 to 30 hours a week. She testified he called her a few days before she was scheduled to start and told her that he was “temporarily closing because of

COVID-19". She has not heard from him since, although she has continued to look for work elsewhere.

As Ms. Lalonde had no other information than what she had been told by Mr. Meece over the telephone, the record was left open until 5:00pm Friday June 4, 2021, to allow her to submit a statement from Mr. Meece. On Friday, June 4, 2021, the Office of Administrative Hearings received from Ms. Lalonde a forwarded email from "John" at dirtynorthak907@gmail.com, dated June 4, 2021, which stated:

Hello Lindsey,

Sorry my reply took so long, I was out of town with the family.

Is this the same issue you were dealing with several months ago?

Im sorry to hear if it is, I know dealing with things like this can be very stressful.

There are a lot of families out there that need such help during these times and it seems like a fight to get it. It has to be a scary situation for you.

However, to answer your questions. As I may have stated in a earlier conversation, I was forced to close my business when COVID hit because right away I took a hit. Being that one of our primary ways of working this job is constant contact with the public, their homes, employers, families and of course their vehicles. Right away things fell slow, people staying home and also losing jobs.

I was not able to build up my clientele as I was hoping to, unable to book appointments, etc, etc, which unfortunately lead me to closing down. I was unable to barely earn any income with doing this business once COVID hit, let alone pay any employees a wage to work. Then it got to the point were there was no work to be done. I was hoping to have it just a temporary closure, but It's looking as thoe I won't be able to have the funds to start up again.

I'm sorry if this adds to your worries. I was looking forward to working with you and having you part of the team.

I do hope things look up for you, this has been a scary time in our world.

I hope this clearly answers your questions.

Dirty North Detailing

John

Ms. Lalonde testified she has an elementary aged son, who was at home doing distance learning until February 2021, when the school began a hybrid option, allowing students to go to the school twice weekly. She said that she had planned on her parents watching her son while she worked. She also testified that she was twice forced to quarantine; once January 3-13, 2021 following exposure to a brother who was positive for the coronavirus, and once April 24-May 4, 2021 following exposure to a sister-in-law who was positive. Each quarantine period was only ten days, as she had no symptoms following exposure.

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—

...

(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;

....

(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;

(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); . . .

APPLICATION

I find that Ms. Lalonde testified credibly as to the circumstances of her hire by Mr. Meece and his telephone call to her. Ms. Lalonde's work did not start as planned on August 1, 2020. Mr. Meece's letter corroborates her testimony insofar as he told her that fault for his closure was COVID-19. Thus far, Ms. Lalonde has established a case for her to be considered as a covered individual under Section 2102(a)(3)(A)(ii)(I)(gg). However, the unresolved question is whether Mr. Meece's closure was a direct result of the COVID-19 public health emergency.

Mr. Meece's letter states "right away I took a hit. Being that one of our primary ways of working this job is constant contact with the public, their homes, employers, families and of course their vehicles. Right away things fell slow, people staying home and also losing jobs. ... I was unable to barely earn any income with doing this business once COVID hit, let alone pay any employees a wage to work." In short, he describes the impact on his business as the same as other personal service businesses or businesses that market to tourists who did not travel in 2020. However, Mr. Meece also states he was "not able to *build up* my clientele *as I was hoping to*, unable to book appointments, etc, etc, *which unfortunately lead me to closing down*. ... Then it got to the point were [sic] there was no work to be done. I was hoping to have it just a temporary closure, but It's looking as tho[ugh] I won't be able to have the funds to start up again." In short, Mr. Meece's business might have been a new business that foundered in a market constricted by COVID-19 before it got underway.

This is not a case of the employer or place of employment closing as a result of a governmental order, as in *In re Jamal Hobson*, OAH No. 21-0130 (Mar. 3, 2021). Nor is it a case where the employee had no reasonable expectation of employment. Here that was a clear job offer, as confirmed by Mr. Meece's letter. This case more resembles *In re Daniel Meissner*, OAH No. 21-0148 (Mar. 2, 2021). There, ALJ Swiderski cited Unemployment Insurance Guidance Letter 16-20, Attachment 1 for an example showing how a person may be considered a "covered individual" when scheduled new employment is retracted:

An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.

Applying that example, ALJ Swiderski found that Meissner's projected employer had retracted the offer of employment as a direct result of the COVID-19 public health emergency in an employer letter that stated: "We regrettably retracted our job offer on Friday March 20th due to the national pandemic of COVID-19. All hiring has been put on hold as of now." This letter was "presumed to be legitimate. It satisfies the exception for retracted employment and qualifies the claimant as a covered individual." Similarly, in *In re Clifton Gaines*, OAH No. 21-0236 (Mar. 30, 2021) there

was no examination of competing economic factors for the closure of a large retail store that told the worker that was closing due to the pandemic.

I conclude that Ms. Lalonde established that she was a covered individual beginning the week ending August 1, 2020. However, the nature of her work (mobile detailing) is necessarily seasonal in Fairbanks, so this case is remanded to the DETS for further proceedings to determine when her season would have ended.

DECISION

The determination of January 13, 2021 [REDACTED] is REVERSED and the case is remanded to the agency with instructions to determine the length of the normal season for mobile auto detailing in Fairbanks.

Dated: June 7, 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 June 7, 2021 the foregoing decision was served on Lindsay (by mail and by email). A courtesy copy was emailed to the UI Support Team and the UI Appeals Office.

[REDACTED]
Office of Administrative Hearings