

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

In the Matter of)
)
CARRIE ADAMS) OAH No. 21-1230-PUA
) Agency No. P21 439
)
_____)

APPEAL DECISION

Docket Number: P21 439

Hearing Date: July 7 & 28, Aug. 12, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Carrie Adams
Aaron Paskavich

None

CASE HISTORY

The claimant in this case, Carrie Adams, timely appealed a January 21, 2021 determination which denied her Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. Formal notice of the determination was given in Letter ID L0009244435, dated January 22, 2021. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in June 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.

After an initial nonappearance on July 7, 2021, the matter was heard in a recorded hearing on July 28, 2021, with a follow-up session for an additional witness on August 12, 2021. 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. Ms. Adams and Aaron Paskavich testified under oath.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act during the period covered by the denial.

FINDINGS OF FACT

Carrie Adams filed a claim for PUA benefits that was effective the week ending March 21, 2020. No benefits were ever paid, and DETS eventually determined that benefits should be denied for all weeks.

Prior to the pandemic, Ms. Adams was mostly a stay-at-home mom. In February 2020, with her youngest a teenager, she was looking to get back into the workforce. Through a referral by a friend, she was offered a job with Morning Bear Cultivation, a

marijuana grow facility in Kasilof. She took two weeks and went to some expense to get a handler permit, which was necessary for her to start. She then worked three days in early March 2020, one of which was orientation, one taking care of plants, and one running errands. Although the position was characterized as independent contractor work and Ms. Adams was paid in cash, there is not much question that she was in fact simply an under-the-table employee. The owner told her he would let her know when she was put on the schedule. This did not occur, and when she called to inquire, he told her he was locked down due to COVID-19. She was never asked to come back.

The marijuana industry did not lock down and apparently was not greatly affected by the pandemic in the long term, although it is possible that in March 2020 there was some disruption of purchases by retailers due to uncertainty about what would unfold. The owner's explanation for the layoff cannot be wholly true—in that he certainly was not locked down—and the dishonest nature of the under-the-table hire and other statements of the owner in the record make it impossible to place any credence at all in the owner's explanation to Ms. Adams. The best evidence in this case is that, whatever explanation he chose to give, the owner of Morning Bear simply decided not to hire help and to do the plant care himself. It is not possible to link this decision directly to COVID-19.

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—

* * *

(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; . . .

UIPL 16-20, Change 5 Issued by USDOL February 25, 2021

The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: “*An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.*” [italics in original]

APPLICATION


The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is unemployed because one of a list of reasons related to the COVID-19 pandemic and is not eligible for unemployment benefits under any State or Federal program. Ms. Adams has been determined to be ineligible for unemployment compensation in 2020-21.

Because I cannot find that Ms. Adams’s treatment, however shabby or unfortunate, was a “direct result” of COVID-19, it is not possible to sustain eligibility on the basis of the Change 5 layoff provision quoted just above. No other provision of the CARES Act fits Ms. Adams’s situation. The result is that Ms. Adams is not eligible to be paid PUA benefits.

DECISION

The determination issued on January 22, 2021 (Letter ID L0009244435) is **AFFIRMED**.

Dated: September 7, 2021


Christopher Kennedy
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 September 7, 2021 the foregoing decision was served on Carrie Adams (by mail and by email). A copy has been emailed to the UI Support Team, UI Technical Team, and the UI Appeals Office.

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Office of Administrative Hearings