

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

In the Matter of)
)
ROBERT DOBESH) OAH No. 21-1293-PUA
) Agency No. P21 501
_____)

APPEAL DECISION

Docket Number: P21 501

Hearing Date: July 27, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Robert Dobesh

None

CASE HISTORY

The claimant, Robert Dobesh, timely appealed a February 23, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136.¹ The Division of Employment & Training Services (DETS) found that the claimant was not eligible for the PUA program starting the week ending April 18, 2020, because he was not impacted by COVID-19 in a manner that made him a covered individual as defined by section 2102 of the Act.

The Department of Labor referred the appeal to the Office of Administrative Hearings in July 2021. Under the terms of referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. AS 44.64.060 procedures do not apply.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act.

FINDINGS OF FACT

Mr. Dobesh is 33 years old. He established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 14, 2020. DETS initially approved the claim and issued benefits for the week ending March 14, 2020 through the week ending November 21, 2020. On February 23, 2021, it redetermined the case and found the claimant was not eligible for the program starting the week ending April 18, 2020. It requested repayment of overpaid benefits.

In early to mid-January 2020, the claimant was living in a halfway house called the Cordova Center when he started a job at the Fiori d'Italia restaurant. Around March

¹ The written denial determination is dated February 24, 2021.

10th, the restaurant closed because of the COVID-19 pandemic. Mr. Dobesh also was released from Department of Corrections custody on March 10th. He obtained a cell phone at that time and had cell service throughout April.

The claimant was told about the restaurant closure when he went to work on March 10th. Restaurant management told him they would contact him at his cell number to let him know when the business was reopening.

The restaurant owner called Mr. Dobesh at his cell phone number several times on or about April 11, 2020. She left messages telling him the restaurant was re-opening and asking him to return to work. The restaurant never heard from him, and it eventually filled his position with a replacement worker.

The claimant asserts he never received any calls or messages asking him to return to work. He planned to submit screen shots showing the incoming calls he received on April 11, 2020. He later submitted a statement saying he could not access his call log because he used prepaid phone cards and did not have an ongoing contract for cell service.

Mr. Dobesh testified that he tried to contact his former employer about the job but never heard back, and he once drove to the restaurant but found the parking lot empty. The dates of those efforts were not clear. The business owner told DETS Mr. Dobesh contacted her sometime after his PUA claim was questioned, but she was unwilling to have him return to work at that time.

Around mid-April 2020, the claimant got a call from the Cordova Center informing him that two former roommates from the facility had tested positive for COVID-19. This was about four weeks after he was released from the Cordova Center. The center advised him to watch for symptoms and get tested for COVID-19.

Mr. Dobesh had experienced cold symptoms since mid-March. They caused him to miss his child's birthday on March 12th. He did not seek medical care or get tested for COVID-19. He also did not get tested after the call from the Cordova Center. He felt like he had a bad cold, but he also felt functional. He responded to the Cordova Center call by deciding to minimize his contacts with others, as was generally advised by public health experts during the pandemic. He continued doing this through 2020. At some point, he lost his sense of taste and smell. He did not feel sick enough to seek medical care and was never tested for COVID-19.

If the claimant had received the April 11th call from Fiori d'Italia, he initially indicated he would have returned to work. However, he also felt he could not have gone back because of his need to self-quarantine due to his symptoms and prior contacts with known COVID-19 cases.

He has looked for other work but had not located a job as of the hearing date.

RELEVANT STATUTORY PROVISIONS

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

(ll) 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 (l);

(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)(l).

APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance (PUA) 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 listed reasons related to the COVID-19 pandemic. It is undisputed that the claimant’s work history did not qualify him for a claim for regular or other unemployment benefits in 2020.

The Division denied Mr. Dobesh’s claim as of the week ending April 18, 2020, the week he was called to return to work but failed to respond. The weight of the evidence supports the Division’s determination that the claimant knew his employer would call to let him know when the restaurant was re-opening, the employer called more than once on or around April 11th and left messages, and the claimant elected not to communicate with his employer or return to his job. He was no longer impacted by the restaurant closure as of the week ending April 18, 2020.

The claimant’s written statement argued that, even if he had returned to work, it would have been only for limited hours due to the pandemic’s impact on the restaurant business. The claimant may have qualified for PUA if he had returned to work and the pandemic prevented him from working his usual schedule. However, he did not return and cannot qualify based on speculation.

Mr. Dobesh's claim that he could not work after April 11, 2020 because of the phone call from the Cordova Center cannot be sustained. The claimant left custody on March 10th, so he was last in contact with people who tested positive about four weeks prior to the call. This is well past the quarantine period for such contacts. The claimant was advised to get tested, but he never did. He opted to self-quarantine indefinitely but was not advised by a health care provider to do so.

The claimant does not fall within the definition of a covered individual under section 2102 of the CARES Act as of the week ending April 18, 2020 or thereafter.

If the claimant has questions about repayment options for overpaid benefits, or if he would like to request a waiver of the repayment requirement due to financial hardship, the Department has advised that its Benefit Payment Control (BPC) office handles these issues. The claimant can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov for more information.

DECISION

The determination issued on February 23, 2021 is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance program effective the week ending April 18, 2020 or thereafter.


Dated: August 2, 2021



For: Kathryn Swiderski
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 August 2, 2021 the foregoing decision was served on Robert Dobesh (by email to: ). A courtesy copy was emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings