

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

In the Matter of)
)
TINA CAUSEY) OAH No. 21-1280-PUA
) Agency No. P21-526
_____)

APPEAL DECISION

Docket Number: P21-526

Hearing Date: July 27, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Tina Causey

None

CASE HISTORY

The claimant, Tina Causey, timely appealed a February 1, 2021 determination (Letter ID: L0009465023) which denied her Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor referred the appeal to the Office of Administrative Hearings on July 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 July 27, 2021. Ms. Causey appeared telephonically from Denton, Texas and testified under oath. The Division of Employment and Training Services (DETS) chose not to appear and relied on the written material it submitted. The record closed at the end of the hearing.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act for the period beginning the week ending November 7, 2020 through the week ending December 6, 2020.

FINDINGS OF FACT

Tina Causey established a claim for Pandemic Unemployment Assistance benefits effective the week ending November 7, 2020, asserting she was impacted by caring for her mother who had COVID-19. The DETS determined that the claimant was not eligible for PUA benefits because her “last employment ended 9/14/2019, [her] mother was tested negative and [she] was not living in the same household with her at the time of impact.” Ms. Causey argues on appeal that the DETS adjudicator misread the lab report; that her mother lived in her household from the first week of November;

and that, while her employment by RAVN Air did end in September 2019, her ability to find work was impacted by the need to care for her mother.

I find that the DETS adjudicator did misread the Lab report, which clearly indicates that the TEST is SARS-CoV-2, the RESULT is DETECTED (i.e., positive for CoVID-19 in the tested sample) and the REFERENCE (i.e., the control) is Not Detected. The hand-written note also states that the patient (“pt”) was advised, and results faxed to various authorities. In addition, Ms. Causey supplied a copy of a note from her mother’s PA-C at Mary’s Corner Medical Clinic, stating she tested positive for SARS-CoV-2 pers a nasal swab PCR test obtained 9/28/2020.

I find that Ms. Causey was not living with her mother at the time of the initial diagnosis. Ms. Causey’s mother was not hospitalized. However, Ms. Causey’s mother’s housemates were concerned because she did not appear to be recovering within two weeks. At her sister’s urging, and having heard her mother’s housemates’ concerns, Ms. Causey flew to Washington the first week of November and drove her mother (who was still too ill to fly) to her home in Texas. Ms. Causey stated that for about two months, her mother was dizzy, disoriented, very weak, and “just not able to get through the day.” She was unable to cook, do laundry, drive or shop for herself and she needed to be reminded to take her medication. She needed help getting to the bathroom and into a shower. At least for this period, Ms. Causey stated, her mother was not able to adequately care for herself. Thus, while Ms. Causey was not caring for her mother during her mother’s infectious period, she was caring for her during her recovery from COVID-19 in her household.

I find, and Ms. Causey does not contest, that Ms. Causey was not employed by RAVN Air in 2020. Ms. Causey had sought employment as a cabin attendant (her job at RAVN Air), but after the declaration of public emergency affected airline travel, it became impossible for her to find work in her field. Ms. Causey received unemployment insurance (UI) compensation following her departure from RAVN Air until she had exhausted her benefits. Beginning the week ending May 9, 2020, she was paid Pandemic Emergency Unemployment Compensation (PEUC) of \$284/week retroactively from August 11, 2020. She states she received a single check of \$300 in November from Alaska Department of Labor, and in January 2021, she again became eligible for PEUC benefits. Ms. Causey does not seek PUA benefits for any period she was eligible for PEUC benefits or UI compensation.

EXCERPTS OF RELEVANT PROVISIONS OF 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—

...

(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;

...

(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).

...

(h) RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE AND DISASTER UNEMPLOYMENT ASSISTANCE.—Except as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if—

(1) the term “COVID-19 public health emergency” were substituted for the term “major disaster” each place it appears in such section 625; and

(2) the term “pandemic” were substituted for the term “disaster” each place it appears in such section 625.

APPLICATION

The U.S. Secretary of Labor advised in Unemployment Insurance Program Letter (UIPL) 16-20, Change 2, issued July 21, 2020, that, if a person becomes unemployed for reasons unrelated to COVID-19, and now is unable to find work because

businesses are closed, that the person is not eligible because “not being able to find a job because some businesses have closed . . . due to COVID-19 is not a listed reason.” This is the situation Ms. Causey found herself in after leaving her job at RAVN Air and moving to Texas. In short, while the difficulty Ms. Causey faced trying to find employment as a cabin attendant may have been related to lack of airline flights during the pandemic, that did not make her eligible for PUA benefits after she exhausted her regular UI compensation.

From the week ending November 7, 2020 through the week ending December 26, 2020, Ms. Causey was not eligible for regular or extended UI compensation, nor for PEUC, as she had exhausted her entitlement. She was providing care for a member of her family who required care during recovery from COVID-19. The question is whether Ms. Causey became unemployed, partially unemployed or unable or unavailable for work by having to care for her mother. She clearly did not become unemployed or partially unemployed by having to care for her mother. Is it enough that she was unavailable to accept work by having to care for her mother?

In the same UIPL 16-20, Change 2, the Secretary says that “if the individual is disqualified from regular UC because of the prior separation issue, *but is currently unable or unavailable to work* for one of the listed COVID-19 related reasons in Section 2102(a)(3)(A)(ii)(I) of the CARES Act, then the individual may be eligible for PUA.” At first glance, it appears that a person who is disqualified from UI due to a voluntary separation may be eligible for PUA because the person is caring for a family member, but a person who exhausted UI benefits is not.

To resolve this apparent contradiction, it is necessary to understand how Section 2102 of the CARES Act operates within a framework established in another federal statute, *The Robert T. Stafford Disaster Relief and Emergency Assistance Act*, 42 U.S.C. 5177, 5189a, as amended by *The Disaster Relief and Emergency Assistance Amendments of 1988*, Pub. L. 100-707, 102 Stat. 4689, 4704, 4705, approved November 23, 1988. That act provides for Disaster Unemployment Assistance (DUA). The regulations governing the provision of DUA benefits are found at Title 20 Code of Federal Regulations, section 625 (20 CFR 625), the regulation referred to in Section 2102(h) of the CARES Act, excerpted above.

In 20 CFR 625.2, the regulations define who is an unemployed worker:

(s) *Unemployed worker* means an individual who was employed in or was to commence employment in the major disaster area at the time the major disaster began, and whose principal source of income and livelihood is dependent upon the individual's employment for wages, and whose unemployment is caused by a major disaster as provided in §625.5(a).

If, as section 2102(h) of the CARES Act directs, “COVID–19 public health emergency” is substituted for “major disaster”, in the above definition of unemployed worker, the

need for a causal link between the claimant’s unemployment and a COVID-19 related reason becomes clear:

(s) *Unemployed worker* means an individual who was employed in or was to commence employment in the *COVID-19 public health emergency* area at the time the *COVID-19 public health emergency* began, and whose principal source of income and livelihood is dependent upon the individual's employment for wages, and whose unemployment is caused by a *COVID-19 public health emergency* as provided in §625.5(a).

Instead of using the term “unemployed worker”, the CARES Act provides its own definition of “covered individual”. However, to be a covered individual, a person must be “unemployed, partially unemployed, or unable or unavailable”. Instead of combining eligibility within the definition of “covered individual”, DUA regulations separately provide a definition of eligibility at 20 CFR 625.4:

An individual shall be eligible to receive a payment of DUA with respect to a week of unemployment, in accordance with the provisions of the Act and this part if:

...

(c) The individual is an unemployed worker or an unemployed self-employed individual;

...

(g) The individual is able to work and available for work within the meaning of the applicable State law: *Provided*, That an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment; or, in the case of an unemployed self-employed individual, the individual performs service or activities which are solely for the purpose of enabling the individual to resume self-employment;

In other words, the DUA regulations provide that a person is excused from the requirement of being “able and available” if an injury *caused* by the major disaster is the reason for inability to work.

Applying the same construction to PUA, the term “unemployed” means that the person’s lack of employment is caused by the *COVID-19 public health emergency*; or, if the person is not able and available for work, that the covered individual is deemed to meet the “able and available for work” requirement if the inability or unavailability to work or engage in self-employment is caused by the *COVID-19 public health emergency*.

The difference between DUA and PUA is derived from the difference in how eligibility is structured and driven by the wider impact of COVID-19. In DUA, a person is eligible if, among other things, the disaster causes him or her to be unemployed and the person is able and available for work (unless an injury caused by the disaster makes the person unable to work). Under PUA, a person is eligible if he or she is unemployed or partially unemployed, or unable or unavailable to work (even if partially or fully


employed, but without paid leave) because of the listed COVID-19 related reasons. Employees and self-employed persons, because they are infected or in close contact with an infected person must quarantine, because they must care for an ill family member, or because they have children to care for when schools are closed, may lose hours and wages, even if they are still employed. PUA provides relief to a broader range of workers than DUA, but it still demands that the covered individual be impacted in his or her employment by COVID-19.

The position of this State is that a person must “become unemployed for reasons related to COVID-19” to be eligible for PUA benefits. Put another way, this State applies the PUA criteria to provide benefits only to individuals who were job-attached through existing employment or through a pending job offer.¹ Here, the need to care for her mother did not cause Ms. Causey to become “unemployed or partially unemployed” nor did it cause her to be “unable or unavailable” for employment she otherwise would have had. Therefore, she is not eligible for PUA benefits.

DECISION

The February 1, 2021 determination (Letter ID: L0009465023) is AFFIRMED.


Dated: August 2, 2021.



Kris Knudsen
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 3, 2021, the foregoing decision was served on Tina Causey (by mail and email to ). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings

¹ *In re Wassily*, No. P20 006 (Commissioner Decision, Jan. 6, 2021). *See also, In re Genitty*, No. P.21 330 (June 21, 2021); *In re Hardon*, No. P21 410 (July 6, 2021).