

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

In the Matter of)	
)	
HANNAH OLOFSON)	OAH No. 21-1528-PUA
_____)	Agency No. P21 751

APPEAL DECISION

Docket Number: P21 751

Hearing Date: August 31, 2021 and
September 16, 2021

CLAIMANT APPEARANCES:

Hannah Olofson

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Hannah Olofson, timely appealed an April 23, 2021 re-determination which denied 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. 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 recorded hearings August 31, 2021 and September 16, 2021.

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

FINDINGS OF FACT

Hannah Olofson established a claim for Pandemic Unemployment Assistance (PUA) benefits effective the week ending March 14, 2020. The Division originally approved her claim and paid benefits. On April 23, 2021 the Division issued a re-determination that the claimant was not eligible for PUA benefits.

Hannah Olofson was born and raised in Metlakatla, Alaska. Metlakatla is located on Annette Island in southeast Alaska. It is the only Indian Reserve in the State of Alaska. The Reserve is 20 miles south of Ketchikan, Alaska and typically reached by seaplane, boat, or ferry. The economy of Metlakatla is principally tied to fishing, seafood processing, services, tourism, and forest products. The current population is approximately 1,500 people.

For several years prior to 2019, Ms. Olofson was the full-time court clerk for the Metlakatla Tribal Court. In 2019, Ms. Olofson moved to a part-time position. Ms. Olofson worked part time for the court system until early 2020. In 2020, Ms. Olofson was laid off due to budget cuts at the courthouse. This employment qualified Ms. Olofson to collect regular unemployment (UI).

Thus, on March 11, 2020, when Governor M. Dunleavy issued the State of Alaska COVID-19 Disaster Declaration and the Tribal Council of Metlakatla issued its first pandemic lock-down order, Ms. Olofson was not employed. She was not working at the courthouse or elsewhere. Instead, Ms. Olofson was caring for her two children at home. She was also assisting with the management of her father's estate. His passing was extremely hard for Ms. Olofson and her family.

Ms. Olofson was offered a temporary position with the U.S. Census Bureau as an Enumerator in late March 2020.¹ There were several important dates for the 2020 United States census in Alaska. On January 21, 2020, the first Alaskan was counted. On March 12, 2020, census information flyers were sent by mail to all Alaska households. On March 26, 2020, reminder postcards were sent to all Alaska households. April 8, 2020 was the date for mailed responses. Census workers were scheduled to start going into the field to contact households that did not respond on April 9, 2020.

The Census Bureau did not set a specific start date for Ms. Olofson, but that was due to the Bureau's need for flexibility. The job was clearly offered and accepted, and the claimant's pay rate was set. Ms. Olofson understood that training would begin when the Census Bureau had hired enough local staff to proceed. Given the timeline above, it was reasonable to believe she would start on or before the week ending April 18, 2020. She was not given a specific end date but knew the job would terminate mid- to late October 2020.

The COVID-19 pandemic disrupted the Census Bureau's plans to schedule and begin training. According to Ms. Olofson, she was informed she was still selected for the job, but training and field operations would be delayed due to the pandemic. Ultimately, Ms. Olofson's training was delayed until August 3, 2020. Ms. Olofson credibly testified at the hearing under oath that after she finished the training, the Census Bureau reduced the number of enumerators it planned to use in Metlakatla from ten to four in response to orders by the Metlakatla Tribal Council, whose directives have the force of federal law. Ms. Olofson was not one of the four people selected, and she was laid off from her census job.

Ms. Olofson applied for Pandemic Unemployment Assistance (PUA) benefits effective the week ending March 14, 2020. The Division originally approved her claim and paid

¹ Enumerators go door-to-door interviewing household residents and updating address lists.

benefits for the period effective the week ending March 14, 2020 through the week ending October 3, 2020.

Throughout 2020 and into 2021, Congress amended and extended pandemic benefits established in the CARES Act. As a result, Ms. Olofson's eligibility for regular UI, PEUC, and PUA benefits varied depending on when different statutory lookback provisions went into effect. The Division issued a re-determination on April 23, 2021 concluding that Ms. Olofson was not eligible for the weeks she had been paid PUA benefits because she became eligible for UI and PEUC based on changes in the law.²

The Division, therefore, informed Ms. Olofson she had been overpaid PUA benefits. The Division demanded repayment of the alleged overpaid benefits. Ms. Olofson was instructed to apply for UI and PEUC, but the Division garnished those benefits when she did so.

Ms. Olofson testified she was not given an opportunity to challenge the overpayment calculation or request a waiver before the garnishment took place. As of the date of the hearing on August 31, 2021, the Division had garnished all but a few hundred dollars of the claimed overpayment. During the months her PEUC benefits were garnished, Ms. Olofson received no benefits. She testified this was an extreme hardship to her because she spent the PUA benefits as they were paid to her in supporting her children and paying her bills.

In response to an email request from the ALJ after the August 31, 2021 hearing, the Division provided the following outline of Ms. Olofson's UI and PEUC eligibility. According to Division records:

- * Ms. Olofson exhausted her regular unemployment benefits from her court clerk job on February 1, 2020.
- * Ms. Olofson did not have UI coverage between February 1, 2020 and May 9, 2020.³
- * Ms. Olofson had retroactive PEUC coverage effective the week ending May 16, 2020 through the week ending July 18, 2020.
- * Ms. Olofson did not have PEUC coverage from the week ending July 25, 2020 through the week ending October 24, 2020.⁴
- * Ms. Olofson had retroactive PEUC coverage effective the week ending October 31, 2020 through the week ending November 14, 2020.

² Ex. 1.

³ Email from Tristan Varela dated August 31, 2021.

⁴ *Id.*

* Ms. Olofson did not have PEUC coverage from the week ending November 21, 2020 through the week ending January 16, 2021⁵.

* Ms. Olofson had retroactive PEUC coverage the week ending January 21, 2021 through the week ending September 6, 2021, and possibly beyond.⁶

EXCERPTS OF RELEVANT PROVISIONS OF LAW

The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law.⁷ The CARES Act creates three new unemployment insurance assistance (UI) programs: Pandemic Unemployment Compensation (PUC), Pandemic Emergency Unemployment Compensation, (PEUC) and Pandemic Unemployment Assistance (PUA). PUA provides emergency unemployment assistance to workers who are left out of regular state UI or who have exhausted their state UI benefits(including any Extended Benefits that might become available in the future).⁸

To be eligible, PUA applicants must establish that they are a covered individual under the ACT. CARES Act, Pub. L .No. 116-136 § 2102(a)(3)(A) defines “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;***⁹ 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—

⁵ *Id.*

⁶ *Id.*

⁷ CARES Act, S. 3548, 116th Cong. (2002).

⁸ *Id.*

⁹ Emphasis added.

(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;¹⁰

(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

(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—

¹⁰ Emphasis added.

- (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).

APPLICATION

1. The week ending March 14, 2020 through the week ending April 4, 2020.

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 reasons related to the COVID-19 pandemic. Ms. Olofson was not eligible for UI or PEUC during this time.

However, Ms. Olofson also was not attached to the labor force at that time in a way to trigger PUA benefits. To be eligible for PUA benefits, a person must be able to show that the pandemic caused them to lose either a job or a contracted-for or agreed-upon job opportunity. Each of the eligibility categories from the CARES Act listed above describes a scenario where a person lost a job, was forced to quit a job, or was unable to get to their place of work, and variations on those themes, all as a result of the COVID-19 pandemic.

Here, Ms. Olofson readily admitted in her testimony that after she was laid off from her part-time job at the Metlakatla courthouse in February 2020, she was not employed out of the home during this period. She was a homemaker providing care for her children and assisting with her father’s estate. She did not lose an actual job because of the pandemic, nor had she accepted a job offer that she was unable to start due to the pandemic for this period. Based on these undisputed facts, DETS’s re-determination that the claimant was not eligible for PUA benefits for the period the week ending March 14, 2020 through the week ending April 4, 2020 was correct.

2. The week ending April 9, 2020 through the week ending May 9, 2020.

Ms. Olofson was a covered individual under § 2102(a)(3)(A)(ii)(gg) for the period the week ending April 9, 2020 through the week ending May 9, 2020: she credibly established a confirmed job offer with the U.S. Census Bureau which was delayed due to the pandemic. Ms. Olofson accepted a job offer that she was unable to start due to the pandemic during this time and was eligible for PUA benefits. This decision is consistent with other rulings finding that census workers are covered individuals for

purposes of the CARES Act for the period of delay from the date they should have started work to the delayed date on which they did so.¹¹

3. The week ending May 16, 2020 through the week ending July 18, 2020 2020.

Ms. Olofson was not a covered individual under the CARES Act for this period because her PEUC qualification rendered her ineligible for PUA pursuant to § 2102(a)(3)(A)(i).

4. The week ending July 25, 2020 through the week ending October 24, 2020.

Ms. Olofson was a covered individual under § 2102(a)(3)(A)(ii)(I)(gg) for the period the week ending July 25, 2020 through the week ending October 24, 2020. She did not qualify for UI or PEUC benefits during this time. She credibly established a confirmed job offer with the U.S. Census Bureau. The job was delayed from April to August 2020 due to the pandemic. Then, the number of workers needed was reduced in response to a public health order from the Metlakatla Tribal Council issued as protective measure to address the pandemic. Ms. Olofson was laid off from her census job as a result. She is, therefore, eligible for PUA benefits during this period. This decision is consistent with other rulings finding that census workers are covered individuals for purposes of the CARES Act for the period of delay from the date they should have started work to the delayed date on which they did so.¹²

5. The week ending October 31, 2020 through the week ending November 14, 2020.

Ms. Olofson was not a covered individual under the CARES Act for this period because her PEUC qualification rendered her ineligible for PUA benefits pursuant to § 2102(a)(3)(A)(i).

6. The week ending November 21, 2020 through the week ending January 16, 2020.

Ms. Olofson was not a covered individual under the CARES Act for this period because, although she was not disqualified due to the existence of UI or PEUC eligibility, her temporary employment with the U.S. Census bureau would have been over. Her then existing employment circumstances did not trigger coverage under § 2102(a)(3)(A)(ii)(I)(aa)-(ll).

¹¹ See, *In the Matter of Derek Vacura*, OAH 21-0158-PUA (March 5, 2021); *In the Matter of William Rude*, OAH 21-0154-PUA (March 22, 2021); *In the Matter of Brandon Stevenson*, OAH 21-0136-PUA (February 26, 2021)

¹² *Id.*

7. The week ending January 21, 2021 through the week ending April 24, 2021, the week the Division issued its re-determination.

Ms. Olofson was not a covered individual under the CARES Act for this period because her PEUC qualification rendered her ineligible for PUA pursuant to § 2102(a)(3)(A)(i).

NOTICE REGARDING POSSIBLE WAIVER OF REPAYMENT OF BENEFITS

Ms. Olofson testified she was told that she was required to repay about \$18,000.00 in benefits. The Division confirmed that it garnished her UI and PEUC benefits after she was directed to apply for them. There is no indication Ms. Olofson was given the opportunity to contest the amount of overpayment or request a waiver.¹³

This decision will impact repayment. The appeal does not, however, calculate Ms. Olofson's benefits. It is possible that, if she applies, Ms. Olofson will qualify for a waiver from recoupment. If a waiver is not granted, she must be given a separate appeal hearing on that issue. The present referral does not encompass these issues, and the present decision does not decide them for or against Ms. Olofson.

The Division has advised the OAH that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available including re-calculated benefits and waiver, Ms. Olofson should call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov

DECISION

The April 23, 2021 re-determination by the Division is **MODIFIED**.

The Division's April 23, 2021 re-determination for the period beginning the week ending March 14, 2020 through the week ending April 4, 2020 is **Affirmed**. Ms. Olofson is not eligible for PUA benefits for the period beginning the week ending March 14, 2020 through the week ending April 4, 2020.

The Division's April 23, 2021 re-determination for the period beginning the week ending April 9, 2020 through the week ending May 9, 2020 is **Reversed**. Ms. Olofson is eligible for PUA benefits for the period beginning the week ending April 9, 2020 through the week ending May 9, 2020.

The Division's April 23, 2021 re-determination for the period beginning the week ending May 16, 2020 through the week ending July 18, 2020 is **Affirmed**. Ms.

¹³ When DETS seeks repayment, the claimant must be informed of the opportunity to seek a waiver excusing him from repayment, the opportunity for a hearing on that issue, and any other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.b.

Olofson is not eligible for PUA benefits for the period beginning the week ending May 16, 2020 through the week ending July 18, 2020 2020.

The Division's April 23, 2021 re-determination for the period beginning the week ending July 25, 2020 through the week ending October 24, 2020 is **Reversed**. Ms. Olofson is eligible for PUA benefits for the period beginning the week ending July 25, 2020 through the week ending October 24, 2020.

The Division's April 23, 2021 re-determination for the period beginning the week ending October 31, 2020 through the week ending April 24, 2021, the week the Division issued its re-determination, is **Affirmed**. Ms. Olofson is not eligible for PUA benefits for the period beginning the week ending October 31, 2020 through the week ending April 24, 2021.

This decision does not address Ms. Olofson's eligibility after the week ending April 24, 2021. Subsequent eligibility should be determined by DETS, and Ms. Olofson provided a separate right to appeal if required.

Dated: September 21, 2021




Carmen E. Clark
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 21 , 2021, the foregoing decision was served on Hannah Olofson (by mail/email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings