

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

In the Matter of )  
 )  
XAVIER BENSON ) OAH No. 21-1554-PUA  
 ) Agency No. P21 778  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 778

**Hearing Date:** September 13, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Xavier Benson

None

**CASE HISTORY**

The claimant, Xavier Benson, timely appealed a May 12, 2021 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 a recorded hearing on September 13, 2021.

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

**FINDINGS OF FACT**

Xavier Benson established a claim for Pandemic Unemployment Assistance benefits effective the week ending May 9, 2020. The Division determined that the claimant was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program.

Xavier Benson was born and raised in Anchorage, Alaska. In January 2020, he was living with his seventeen-year-old teenage son, Xavon Parker. Due to an apparent violation of his probation, Mr. Benson was remanded into custody. He was released on or about May 5, 2020.

Mr. Benson was hired as a prep cook by 49<sup>th</sup> State Brewery on August 25, 2020. He remained at the brewery until November 6, 2020. On November 6, 2020, Xavon Parker was diagnosed with COVID-19 by the First Care Clinic on Huffman Road. By that time Mr. Parker had completed school and was employed. Mr. Benson was advised to quarantine with his son and provide care.

Mr. Benson called 49<sup>th</sup> State Brewery and told the manager on shift that he would not be returning to work until after his son was better. Mr. Benson did not speak with Summer Schell, the 49<sup>th</sup> State Brewery hiring manager and personnel supervisor.

Mr. Benson self-isolated and took care of his son until Mr. Parker was healthy enough to return to his own job. Mr. Parker appears to have returned to work and his normal activities in approximately three weeks to a month. During that time Mr. Benson did not contact 49<sup>th</sup> State Brewery and received no calls from the business.

Mr. Benson did not contact 49<sup>th</sup> State Brewery after Xavon Parker recovered from COVID-19. That is, Mr. Benson did not call and ask to be returned to the schedule or enquire about his next shift. Summer Schell reported that 49<sup>th</sup> State Brewery considered Mr. Benson to have voluntarily resigned.

Mr. Benson explained that he supported himself by selling his car and performing odd jobs under the table rather than call the brewery and return to work.

Mr. Benson also implemented a plan to open his own business which he has successfully done.

#### **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.<sup>1</sup> 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).<sup>2</sup>

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

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<sup>1</sup> CARES Act, S. 3548, 116<sup>th</sup> Cong. (2002).

<sup>2</sup> *Id.*

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

(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).

### **APPLICATION**

#### **1. The week ending May 9, 2020 through the week ending August 21, 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. The Division’s rationale for finding the claimant ineligible for PUA benefits for the period the week ending May 9, 2020 through the week ending August 21, 2020 is based on a fundamental premise of the law governing PUA eligibility: Mr. Benson was not attached to the workforce at that time.

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, Mr. Benson readily admitted in his testimony that he did not lose an actual job as a result of the pandemic, nor had he accepted a job offer that he was unable to start due to the pandemic for this period. Mr. Benson had been incarcerated and needed to find employment upon his release. Based on this undisputed fact, DETS’s determination that the claimant was not eligible for PUA benefits for the period the week ending May 9, 2020 through the week ending August 21, 2020 was correct.

#### **2. The week ending August 28, 2020 through the week ending November 7, 2020.**

Mr. Benson was not eligible for PUA benefits during this period because he was actively employed at 49<sup>th</sup> State Brewery. Based on this undisputed fact, DETS’s

determination that the claimant was not eligible for PUA benefits for this period was correct.

**3. The week ending November 14, 2020 through the week ending November 28, 2020.**

Mr. Benson was a covered individual under § 2102(a)(3)(A)(ii)(cc) and (ff) for the period the week ending November 14, 2020 through the week ending November 28, 2020: he provided proof of his son's COVID-19 diagnosis and credibly testified he was told to self-isolate to remove the risk of infecting others. Mr. Parker recovered within a few weeks and returned to his normal activities by December 2020, however.

It appears DETS concluded that Mr. Benson used his son's illness as an excuse to quit his job. While the DETS's suspicion is understandable, there was no evidence that Mr. Benson left work on November 6, 2020 for any reason other than Mr. Parker's diagnosis. The fact that it appears Mr. Benson concluded he did not want to return to employment at 49<sup>th</sup> State during his leave of absence does not negate the validity of his original self-isolation or need to provide care for a family member.

**4. The week ending December 5, 2020 through the week ending May 15, 2021, the week the Division issued its determination.**

Mr. Benson credibly testified he left 49<sup>th</sup> State to care for his son, Xavon Parker. However, once Mr. Parker returned to work and his normal activities, Mr. Benson was no longer a covered individual under § 2102(a)(3)(A)(ii)(cc) and (ff). Mr. Benson suggested he should continue to be treated as a covered individual after his son's recovery because "but for" needing to care for his son, Mr. Benson might still be working at 49<sup>th</sup> State Brewery.

Mr. Benson's testimony on that point was not persuasive. Had Mr. Benson contacted 49<sup>th</sup> State Brewery to return but been told he had been replaced and was no longer needed; he might have established continued eligibility. But Mr. Benson did not do so. There is no evidence that Mr. Benson was laid off due to COVID-19. This tribunal finds it is more likely than not that Mr. Benson took a COVID-19 covered leave of absence then never returned to the brewery because he preferred to work on opening his own business. While that may have been a reasonable decision on Mr. Benson's part, it does not entitle him to PUA benefits.

**DECISION**

The May 12, 2021 determination by the Division is **MODIFIED**.

The Division's May 12, 2021 determination for the period beginning the week ending May 9, 2020 through the week ending August 21, 2020 is **Affirmed**. Mr. Benson is not eligible for PUA benefits for the period beginning the week ending May 9, 2020 through the week ending August 21, 2020.

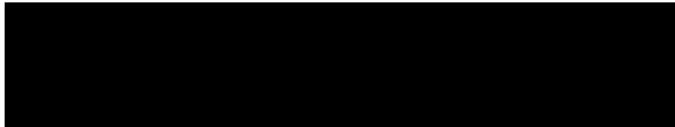
The Division's May 12, 2021 determination for the period beginning the week ending August 28, 2020 through the week ending November 7, 2020 is **Affirmed**. Mr. Benson is not eligible for PUA benefits for the period beginning the week ending August 28, 2020 through the week ending November 7, 2020.

The Division's May 12, 2021 determination for the period beginning the week ending November 14, 2020 through the week ending November 28, 2020 is **Reversed**. Mr. Benson is eligible for PUA benefits for the period beginning the week ending November 14, 2020 through the week ending November 28, 2020.

The Division's May 12, 2021 determination for the period beginning the week November 28, 2020 through the week ending May 15, 2021, the week the Division issued its determination, is **Affirmed**. Mr. Benson is not eligible for PUA benefits for the period beginning the week ending November 28, 2020 through the week ending May 15, 2021.

This decision does not address Mr. Benson's eligibility after the week ending May 15, 2020. Subsequent eligibility should be determined by DETS, and Mr. Benson provided a separate right to appeal if required.

Dated: September 13, 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 13, 2021, the foregoing decision was served on Xavier Benson (by mail). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.



Office of Administrative Hearings