

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

In the Matter of )  
 )  
ALA SHAW ) OAH No. 21-1943-PUA  
 ) Agency No. P21 940  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 940

**Hearing Date:** October 14, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Ala Shaw

None

**CASE HISTORY**

The claimant, Ala Shaw, timely appealed an adverse determination by the Division of Employment and Training Services, issued May 27, 2021, 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 on September 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 October 14, 2021. Ms. Shaw appeared telephonically and testified under oath; she called her daughter, Irina Geddes, as a witness and Ms. Geddes also appeared telephonically and testified under oath. The DETS chose not to appear or to make a representative available by telephone; it relies on the documents it submitted in this appeal and which are admitted as Exhibit 1.

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

**FINDINGS OF FACT**

Ala Shaw filed a claim for Pandemic Unemployment Assistance benefits on May 21, 2021, seeking benefits to the week ending March 21, 2020, asserting she had her hours reduced due to the COVID-19 pandemic and that she was essentially forced to quit because the hours were not enough to live on. The Division determined that the claimant was not eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program, that is, that she voluntarily quit her job and that she failed to establish that the reduced hours were due to COVID-19. The DETS also asserted that she had moved to Texas, and that she failed to establish that she was a resident of Alaska in 2019 and 2020.

Ms. Geddes' testimony established that her mother frequently visited her in Alaska over the years. She testified her mother was living in her household for at least two years before she started working at Walmart in 2019. She testified that her mother worked at Walmart in Wasilla. Ms. Geddes testified her mother told her the people were getting sick and they cut her hours. Ms. Geddes had a young child who was not in school.

Ms. Shaw testified she moved to Alaska in 2017 and lived with her daughter. She testified she had divorced her then husband in Texas. She testified she married a different man in Texas on August 28, 2019. Her husband remained in Texas while she returned to Alaska to work. His mother began to have "brain problems," she said, and he had to stay there.

Ms. Shaw began working at Walmart in Wasilla on September 18, 2019, in the electronics and furniture section. She testified that in the middle of February 2020, her manager told her that the store was closing (or reducing) the furniture, picture, and electronics sections because the goods were not coming from China because of the pandemic. According to Ms. Shaw, he told them they were bringing goods from the regional distribution centers, but there were less goods and this was the reason that their hours were being reduced.

Ms. Shaw said she worked through March 12, 2020 and on March 13, 2020 she told the "personnel" she was quitting because "it's a pandemic, it is official global pandemic" and she could not live on the pay for 20 hours a week." She said her husband told her that "no way was working for 20 hours a week worth it," and, she said, he was convinced that they needed to be prepared for what might happen in a global pandemic. So, she moved from Alaska on April 30, 2020, to New Braunfels, Texas, to live with her husband and help him with his mother. Her husband died on April 8, 2021.

According to DETS Ex. 1, pg. 25, Ms. Shaw was paid regular unemployment (UI) benefits from May 21, 2021 through July 24, 2021; but was eligible from Dec. 6, 2020 (Ex. 1, pg. 24). In total, Ms. Shaw said, she received 18 weeks of UI benefits. Ms. Shaw stated that she understood she was not eligible for UI benefits, but then the PUA staff assisted her in getting them. Ms. Shaw stated she suspected that they were shuffling her back and forth and that the receipt of UI was just because it was less expensive.

### **EXCERPTS OF RELEVANT PROVISIONS OF LAW**

**The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance, amended by Consolidated Appropriations Act, Public Law 116-260, Div. N, Title II, subchapter IV, Sec. 241 (a).**

(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—
      - (aa) the individual has been diagnosed with 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
  - (iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; 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).

**Unemployment Insurance Program Letter No. 16-20, change 5.**

Guidance issued by the Secretary of Labor on February 25, 2021, added the following eligibility provisions under Section 2102(a)(3)(A)(ii)(I)(kk):

- 4.iii 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.

This new COVID-19 related reason expands eligibility beyond the current provision in item (jj) or Section 2102(a)(3)(A)(ii)(I) of the CARES Act, which is limited to situations where the individual's place of employment is closed. Under this new COVID-19 related reason, if an individual is laid off because the place of employment is partially closed (either permanently or temporarily) or the individual has experienced a reduction in hours, the individual may now self-certify eligibility.

**Unemployment Insurance Program Letter No. 16-20, Change 4, Part C.15. Backdating Requirements and Limitations (Section 201(f) of the Continued Assistance Act)**

Issued by U.S. Department of Labor on January 8, 2021: As discussed in Question 4 of Attachment I to UIPL No. 16-20, Change 1, individuals filing for PUA must have their claim backdated to the first week during the Pandemic Assistance Period (PAP) in which the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Section 201(f) of the Continued Assistance Act provides a limitation on backdating for claims filed after December 27, 2020 (the enactment date of the Continued Assistance Act).

- *PUA initial claims filed on or before December 27, 2020 (the enactment date of the Continued Assistance Act).* Initial PUA claims filed on or before this date may be backdated no earlier than the week that begins on or after February 2, 2020, the first week of the PAP.
- *PUA initial claims filed after December 27, 2020 (the enactment date of the Continued Assistance Act).* Initial PUA claims filed after this date may be backdated no earlier than December 1, 2020 (a claim effective date of December 6, 2020 for states with a Saturday week ending date and a claim effective date of December 7, 2020, for states with a Sunday week ending date). [Emphasis in original.]

**APPLICATION**

Ms. Shaw filed her claim after December 27, 2020. Thus, her initial PUA claim may not be backdated earlier than the effective date of December 6, 2020. UIPL No. 16-20, Change 4, Part C.15. According to the DETS, Ms. Shaw was eligible for regular unemployment compensation (UI) from December 6, 2020 (Ex. 1, pgs. 15, 24). A necessary qualification for PUA benefits is that the claimant is NOT eligible for regular

unemployment benefits. Section 2102(a)(3)(i). Therefore, for anytime Ms. Shaw was eligible for regular unemployment compensation, regardless of whether she chose to collect it, she is not eligible for PUA benefits.

Because the records submitted by DETS do not indicate clearly the period of UI eligibility, the tribunal addresses her remaining claim. Here again, Ms. Shaw has an initial barrier to overcome. A claimant must be “able and available for work” except for the occurrence of one of the listed COVID-19 related reasons in Section 2102(a)(3)(A)(ii)(I). Ms. Shaw reported that she was not able and available for work in Texas, because “with COVID 19 I can’t be looking for work.” (Ex. 1, pg.23). Ms. Shaw did not present evidence of a health care provider’s advice not to work. Instead, it appears that Ms. Shaw had chosen, at least as of May 26, 2021, not to look for work because of a general fear of contracting COVID-19. As the Secretary has made clear,

[a]n individual who does not go to work due to general concerns about exposure to COVID-19, and who does not meet any of the other COVID-19 related criteria for PUA, is not eligible for PUA because general concerns about exposure to COVID-19 is not one of the reasons listed in section 2102(a)(3)(A)(ii)(I). UIPL No. 16-20, Change 1, Attachment I, pg. I-13.

As her COVID-19 related reason, Ms. Shaw claims that she meets the requirements of an employee whose “hours have been reduced or . . . laid off as a direct result of the COVID-19 public health emergency” under Section 2102(a)(3)(A)(ii)(I)(kk). She rests her claim on something she was told by her manager, who did not testify, and whose statement is not part of the record. According to Ms. Shaw, he said that products were slow coming from China, that the reason for this was COVID-19 in China, and that Walmart was drawing stock from domestic distribution centers. Moreover, she has no evidence that her manager was correct in either his explanation for the reductions in the picture, electronics, and furniture sections, or that such reductions were why employee hours were cut.

To succeed in her claim, Ms. Shaw must prove that her hours were reduced as “a *direct result* of the COVID-19 public health emergency.”<sup>1</sup> In Unemployment Program Letter No. 16-20, Change 4, Attachment I, pg. I-8, the Secretary provided guidance as to when closure under (jj) was “a direct result of the COVID-19 public health emergency.” If a business is shut down due to an emergency declaration the resulting unemployment would be considered a direct result of COVID-19. Although a government-mandated closure was not necessary, the claimant must be able to show

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<sup>1</sup> The COVID-19 public health emergency is defined in Section 2102 (a)((2) as “the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020, with respect to the 2019 Novel Coronavirus.” The declaration of existence of a public health emergency under section 319 of the Public Health Service Act permitted Secretary Azar to take a number of steps to protect the health and security of *U.S. citizens living abroad*. In short, it was a means of quickly repatriating U.S. citizens as well as providing for other emergency responses.

it was closed as a direct result of the public health emergency. For example, a business may close because it is not able to operate with social distancing protocols that may be required by, or recommended by public health authorities, even if the authorities did not require the business close its doors.

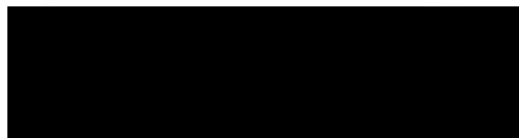
Change 4 provided an example of a business operating a restaurant and brewery; if the restaurant closed, its employees may be eligible for PUA. But the example was clear that an individual working reduced hours while the place of employment continues to operate does not satisfy (jj). In Change 5, the Secretary expanded (jj) to include employees whose hours are reduced, even if their place of employment is not closed. However, the Secretary did not relax the need to show the reduction in hours was a “direct result of the COVID-19 public health emergency,” just as an employee must show a business closure was a direct result of the COVID-19 public health emergency.

This is what Ms. Shaw failed to provide. Even if Ms. Shaw is correct that her manager told her this, it doesn’t mean that her manager’s statement is (1) true, (2) reflected a condition directly caused by the COVID-19 public health emergency, and (3) that the reduction in hours was a direct result of the employer’s compliance with that public health emergency. Ms. Shaw failed to show, for example, that as part of the response to the public health emergency, the U.S. prohibited importation of goods from China that the Alaska Walmart sold and that it was in response to this prohibition that Walmart reduced the size and staff hours in its electronics, furniture and picture sections, and that staff were not offered additional hours in other sections. It is not enough to point to the economic and social impact in China of the COVID-19 pandemic. Assuming Ms. Shaw established she was “able and available,” I conclude that Ms. Shaw failed to establish that the reduction in hours was a direct result of the COVID-19 public health emergency, and that she is therefore not eligible for PUA benefits.

### **DECISION**

The determination of May 27, 2021 is **AFFIRMED**.

Dated: November 3, 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 November 3, 2021, the foregoing decision was served on Ala Shaw (by mail/email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

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Office of Administrative Hearings