

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

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| In the Matter of |) | |
| |) | |
| RICKY STONE |) | OAH No. 21-2379-PUA |
| <hr style="width: 80%; margin-left: 0;"/> |) | Agency No. P21 966 |

APPEAL DECISION

Docket Number: P21 966

Hearing Date: November 1, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Ricky Stone

None

CASE HISTORY

Mr. Stone appealed a March 18, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0010360293. When denying eligibility, the Division noted that; “You reported on 6/10/2020 you were impacted by COVID-19 as you were caring for a child who was unable to attend school in person. You were unable to start a new job as the staff was unable to process the recruitment paperwork. No Bona fide start date was established, and the job offer could not be verified.”

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on October 1, 2021. Under the 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 November 1, 2021. Mr. Stone testified telephonically and under oath. Mr. Stone also called a witness, Eviqsiq Stone, his wife, who also testified telephonically and under oath.

At its own election, the Division of Employment and Training Services (Division) provided only written materials for the hearing and was not a live participant. Those documents were identified as Exhibit 1 admitted into evidence at the hearing.

On November 1, 2021 an order was issued holding the record open until November 9, 2021. On November 9, 2021 Mr. Stone forwarded a letter from Nancy Attungana, Deputy

Assistant to the Mayor of the North Slope Borough. This document is identified as Exhibit A and is admitted into evidence.

The matter was referred to the ALJ to consider whether Mr. Stone meets the eligibility requirements under the act.

FINDINGS OF FACT

Mr. Stone and his family are long term Point Hope residents. Point Hope is a village of approximately 700 people. It is 248 miles southwest of Utquiagvik. The economy is largely subsistence hunting fishing and harvesting¹.

Point Hope has a jobs program that the residents call "The Mayors List". This is a rotating list of jobs from the North Slope Borough (NSB) that are parceled out to residents when a job becomes open. Once a resident puts their name on the list, they will get a job offer when their names come to the top of the list. Jobs may include such jobs as being on the Polar Bear Patrol, working at the store, office or being a van driver. These jobs are for a minimum of 3 months and can last for at least 6 months. Sometimes, but rarely, jobs from the Mayor's List become permanent employment. The Mayor's List has a coordinator in Point Hope, but all the paperwork, and human resource aspects of the jobs are handled through the NSB in Utquiagvik.

Mr. Stone has been on the Mayor's List and getting jobs through it for 7-8 years. For example, in 2018 Mr. Stone was hired for Polar Bear Patrol. That job was from December 2018 through February 2019. He was paid \$20.00 an hour and worked daily from midnight to 8:00 a.m.

Mr. Stone was not working for pay in January or February 2020. His name was on the Mayor's List for 2020 and he hoped that his name would get to the top of the list in 2020.

Mr. Stone has lived in Point Hope for at least 10 years. In February 2020 he and his wife flew to Anchorage for their third child's birth. When Mr. Stone and his wife flew to Anchorage, they expected to return to Point Hope within 3 -4 days. Their two older children stayed in Point Hope with their maternal grandmother. However, the infant was born with a significant, congenital intestinal disorder. She was in infant ICU/Natal Unit for 7 months and has needed significant medical care since then. Mr. Stone, and his wife stayed in Anchorage to be near their infant. Their older children remained in Point Hope with their grandmother until June 2020.

Then, in late May or early June of 2020, Mr. Stone was called by the NSB and offered the position of Sr. Van Driver. This offer was tendered because he was at the top of the Mayor's List. He was told that he would have to get back to Point Hope to work if he accepted the job. Mr. Stone informed the NSB that he accepted the job offer and

¹. www.north-slope.org/our-communities/point-hope.

would fly back to Point Hope immediately. Based on the information from the phone call he expected to start as soon as he arrived.² Upon arriving in Point Hope he notified the coordinator that he was there. He filled out all the required paperwork and was in daily contact with the local coordinator, Nancy³. The coordinator informed him that she was unable to get any response from NSB to finalize their end of the paperwork. She said that he could not actually start working until the NSB portion of the paperwork was done. She told Mr. Stone that she kept trying to get a response from NBS but that they never answered their phone.⁴ She also told Mr. Stone the NSB offices were closed, or really short staffed, due to the Covid-19's closures, and that was why the remaining paperwork was not moving forward.

After a week or more of waiting for his job to start, Mr. Stone returned to Anchorage to be with his wife and sick infant. Both Mr. Stone and his wife testified credibly that the plan was for him to return to Point Hope to work and send them money as soon as he got called that the paperwork was done. He informed the coordinator that he was flying to Anchorage and that he would return to Point Hope as soon as they got the paperwork ready for him to begin driving. Thereafter, Mr. Stone was never contacted to start as the senior van driver.⁵

EXCERPTS OF RELEVANT PROVISIONS OF LAW

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—

². Exhibit 1: Page 19 reflecting the Division’s starting pay date as June 8, 2020.

³. Exhibit A.

⁴. This difficulty, getting the NSB to answer the phone, respond to emails, or provide a substantive answer, was also experienced by the Division. Exhibit 1: Page 10.

⁵. Exhibit A: “he had called our office and stated that he need to decline the position due to a family emergency, family had to move to a place closeto a hospital.”

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(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;

UIPL 16-20_Attachment 1. Issued by USDOL April 2, 2020

g) 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. For example:

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An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.

UIPL 16-20 Issued by USDOL April 5, 2020

C (1) For purposes of PUA coverage, an individual “lacking sufficient work history” means an individual (1) with a recent attachment to the labor force (2) who does not have sufficient wages in covered employment during the last 18 months to establish a claim under regular UC, and (3) who became unemployed or partially unemployed because of one of the COVID-19 related reasons identified under Section 2102. Demonstration of a recent attachment to the labor force for PUA coverage purposes also includes individuals who had a bona fide offer to start working on a specific date and were unable to start due to one of the COVID-19 related reasons identified under Section 2102.

C(1)(g) 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. For example: • An individual is unable to reach his or her job because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of the coronavirus or the employer has closed the place of employment. • An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.

APPLICATION

In order to establish that Mr. Stone is eligible to be a covered individual under section (gg) of the Alaska Cares Act of 2020, the facts have to support a finding that he had been attached to the labor force at the time that Covid-19 factors resulted in him being laid off or fired from a job.⁶ A person can prove that they were attached to the

⁶. UIPL 16-20 Issued by USDOL April 5, 2020 (C)(1).

labor market, even if they were not actually working at the time of the Covid-19 event, if they had been given, and accepted a firm offer to begin employment at a future, set time.⁷ However, if the person was only given a contingent offer, subject to future finalization, then, that hope of a future job does not establish the kind of attachment to the labor market required by the Cares Act.

The documentary and testimonial evidence supports Mr. Stone's claim that he'd received a firm offer to begin work, and that the offer was then withdrawn due to Covid-19 related issues.

A significant evidentiary issue was whether Mr. Stone had been hired by NSB to start work as a Senior Van Driver for the summer of 2020. He and his wife both testified credibly that the phone call from the NSB was a clear hire. Their belief was based on the specific conversation with the person who called and offered the job. Not only was there a firm offer to start, but the process of the hiring was consistent with Mr. Stone's past hiring's through the Mayor's List. Mr. Stone returned to Point Hope for the sole⁸ purpose of beginning that job. The fact that a job was offered and accepted is further confirmed in Exhibit A. In this email the Deputy Assistant to the Mayor confirms that Mr. Stone was offered the position, that he accepted the position and that he filled out the paperwork required of him. She also confirms that he was not, then, formally hired since the NSB did not complete the necessary paperwork.

Having established that he was offered and accepted a job to be a senior van driver, the next question is whether the job offer was then rescinded due to Covid-19 related reasons. It is the determination of this tribunal that the offer was initially delayed, and then functionally rescinded, due to office closures and workforce reduction in the NSB offices which prevented NSB from completing their paperwork. It is also the tribunal's finding that these staffing issues at NSB were caused by Covid-19 related closures and layoffs. While it is true that Mr. Stone then returned to Anchorage, rather than remain in Point Hope, he credibly reported that he informed the coordinator that he would return as soon as the paperwork was completed. Since he was only a flight away, he remained able and available to take the job if they had ever gotten back to him. Mr. Stone's testimony is different than Ms. Attungana's written information on this point. In Exhibit A she reports that Mr. Stone affirmatively withdrew himself from the van driver position when he returned to Anchorage. This tribunal finds that Mr. Stone's testimony is more credible. This tribunal finds that he did not withdraw himself from the van driver position when he returned to Anchorage to be with his wife and sick infant. The evidence supports the finding that he remained able and available to work, and willing and able to return to Point Hope immediately if and when the NSB staff caught up on their paperwork.

⁷ UIPL 16-20 Issued by USDOL April 5, 2020 (C)(1)(g).

⁸ By June, the other 2 children were also in Anchorage to be near their mom and sister.

The next question is when his eligibility for PUA benefits would end. While he remained able and available to work, he also reported that the van job was not expected to last longer than 6 months, because of the rotating nature of the Mayor's List. Had the NSB actually completed the start paperwork, he would have had a reasonable expectation of 6 month's employment. Therefore, the end date will be established as December 8, 2020 which 6 months from the June 18, 2020 date the Division identified as his first pay date.⁹ which is December 8, 2020.

DECISION

It is the determination of this tribunal that Mr. Stone's situation does not fit the definition of a covered individual pursuant to The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance. The DETS March 18, 2021 determination that he is ineligible for PUA benefits is **REVERSED**. Mr. Stone is eligible for PUA benefits beginning the week ending June 13, 2020¹⁰. His eligibility shall continue until the week ending December 12, 2020.

Dated November 18, 2021



Karla F. Huntington
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.

NOTICE REGARDING POSSIBLE WAIVER OF REPAYMENT BENEFITS

If the division continues to seek recovery of previously paid benefits after this decision Mr. Stone can apply for a waiver from repayment. No waiver will be granted if he does not seek it. If a waiver is sought but not granted, Mr. Stone must be given a separate appeal hearing on that issue if he requests. This decision will affect repayment of previously approved benefits. 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 Mr. Stone can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

⁹. Exhibit 1: Page 19.

¹⁰. This tribunal has determined that Mr. Stone, in good faith, applied for benefits. The Division began paying him benefits effective the week ending March 21, 2020. He was not eligible at that time. The tribunal has seen no indication of fraud or bad faith.

CERTIFICATE OF SERVICE

I certify that on November 18, 2021 the foregoing decision was served on Ricky Stone (by mail and email). A 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