

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

In the Matter of)
)
LUIS TORRES DANIEL) OAH No. 21-1804-PUA
) Agency No. P21 894
_____)

APPEAL DECISION

Docket Number: P21 894

Hearing Date: October 12, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Luis Torres Daniel

None

CASE HISTORY

The claimant, Luis Torres Daniel, timely appealed a June 21, 2021 determination by the Division of Employment and Training Services (Division or DETS) 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 or about 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 12, 2021. The claimant appeared telephonically and testified under oath on his own behalf. At its own election, the Division provided written materials for the hearing and was not a live participant.

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

FINDINGS OF FACT

Luis Torres Daniel established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 21, 2020. As further discussed below, after paying him a significant sum of PUA benefits, the Division determined that the claimant was not eligible for most of those benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program.

The claimant explained in his testimony at the hearing that in 2019, prior to the onset of the COVID-19 pandemic, he was not employed and instead was primarily helping out with his family by caring for his younger siblings. In early 2020, he found employment with Zaggs, a retail smartphone accessory and repair company with

shops in the Fifth Avenue and Dimond Center malls in Anchorage. He worked for them in January, February, and the first half of March of 2020. He was laid off when the State of Alaska and Anchorage's hunker-down orders caused Zaggs to shut down its stores in mid-March.

In early May of 2020, Zaggs called the claimant, informed him that they were reopening their stores, and offered to put him back to work; first he had to undergo training to be able to perform different tasks than he had done for them in the past. He worked one day in training and then was given no more hours by Zaggs. The reasons for this were disputed in this case. The claimant testified that Zaggs simply never called him back for more training or to put him on the schedule. According to notes in DETS's file, however, Zaggs management told DETS that after working one day, the claimant told them he was having issues because he was "losing his place to stay;" then later he "didn't respond when another shift was offered to him, and finally quit ... via text on 5/21/20." (Exhibit 1, pp. 11, 16.) At the hearing in this appeal, the claimant credibly testified that this was not true, and that he never failed to respond to an offer of a shift or refused work from Zaggs.

After working for Zaggs, the claimant next went to work for Crew Cut Lawns, an Anchorage landscaping company. On his very first day of work, May 13, 2020, he severely injured his knee. He finished working that shift but his knee was so swollen that he couldn't return to work the next day. The claimant testified at the hearing that he called the employer, explained what had happened, and offered to get a doctor's note. The employer responded by telling him they couldn't hold the position open for him and he should not bother getting the note; they never called the claimant to work for them again. DETS's documents indicate that Crew Cut Lawns informed the agency that the claimant had worked one day, was scheduled to work on May 16, 2020, and then was terminated after he was a "no-call no-show." (Exhibit 1, pp 12-13.) At the hearing, the claimant adamantly and credibly contested this version of events and insisted that he was terminated because of his knee injury and his inability to work the day after his injury.

A few weeks after the claimant's initial layoff from Zaggs, he applied for PUA benefits on or about April 24, 2020. The Division apparently initially determined that he was a "covered individual" under the CARES Act, as PUA benefits were paid to him for the weeks ending March 21, 2020 through December 12, 2020, and the weeks ending January 2, 2021 through May 29, 2021. The Division then issued a notice to him dated June 21, 2021 (Letter ID L0013479674). This is the denial notice at issue in this appeal, and it states the basis for denying his eligibility as follows:

Under Section 2102 of the CARES Act of 2020, Public Law 116-136, you did not meet the eligibility requirements beginning the week ending May 16, 2020. ... It has been determined that you have not been impacted by COVID-19 reasons as of the week ending May 16, 2020 and are therefore not a covered individual. (Exhibit 1, p. 3.)

The net effect of this denial notice was that most of the PUA benefits paid to the claimant, starting with the week ending May 16, 2020, were now considered to be an overpayment liability that he was required to repay the Division. The weeks ending March 21 through May 9, 2020 were not covered by the denial notice and therefore those benefits were not included in the overpayment liability amount. (See Exhibit 1, p. 25.)

At some point, the Division apparently told the claimant he would have to repay this significant sum (over \$22,000) of overpaid benefits. It is not clear, however, whether he was ever given a formal written notice to repay, or whether he has ever been informed of the opportunity to seek a waiver of the repayment obligation, or of the opportunity for a hearing regarding the overpayment liability and repayment obligation.

After the termination of his employment with Crew Cut Lawns, the claimant searched for employment but was unable to find a job.¹ The claimant timely appealed the June 21, 2021 denial notice.

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—

....

¹ He remained unemployed at the time of the October 12, 2021 hearing.

(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;

. . . .

(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

A. Eligibility

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. It is undisputed in this case that the claimant’s work history did not qualify him for a claim for regular or other unemployment benefits.

The Division’s June 21, 2021 denial notice provides no useful information as to the Division’s rationale for denying his PUA eligibility. The letter essentially just states the Division’s conclusion that starting with the week ending May 16, 2020, the claimant was ineligible, but says nothing about **why** it reached that conclusion. Within the Division’s 25-page packet of documents submitted as an exhibit for this appeal are notes that discuss the responses of the former employers, Zaggs and Crew Cut Lawns,

regarding the termination of the claimant's employment. But there is no information linking those notes to the determination regarding PUA eligibility.

Regardless of the Division's rationale for its June 21, 2021 denial, however, the documents submitted into the record and the claimant's sworn testimony provide sufficient information for this Tribunal to make a determination. First, the Division correctly determined that the claimant was eligible for PUA after he was initially laid off by Zaggs in mid-March 2020. This loss of employment was directly caused by the COVID-19 pandemic, so he was clearly eligible for PUA benefits at that point in time. His eligibility continued for eight weeks, and benefits for those weeks were correctly excluded from his overpayment liability.

The Division then found that the claimant's eligibility ended during the week ending May 16, 2020. The rationale for this finding can be discerned from the record, based on the fundamental requirement of PUA eligibility that a claimant must have become unemployed and remain unemployed due to the COVID-19 pandemic. The claimant in this case found work during that week ending May 16, 2020 at Crew Cut Lawns, so *he was no longer unemployed* and thereby lost his PUA eligibility. He then almost immediately lost his job at Crew Cut Lawns, but this *loss of employment was not caused by the pandemic* it was caused by his on-the-job injury and subsequent termination by the employer.

The claimant's testimony regarding his employment in 2020 and the circumstances that led to the loss of those jobs was extremely credible, and the Tribunal accepts his version of those events as true. The claimant's PUA eligibility, unfortunately, was in essence cut off by his single day of work as a landscaper, and according to his own testimony his loss of that job after that day of work was caused by his on-the-job injury and had no connection whatsoever with the pandemic.

In addition, the claimant's subsequent unsuccessful efforts to find a job did not make him eligible for resumed PUA benefits, because an inability to find work is not a qualifying factor for eligibility. It is undisputed that after his initial period of eligibility, the claimant in this case did not lose a job or a job offer that was disrupted, withdrawn or terminated as a result of the COVID-19 pandemic. Being hindered in one's ability to find work is not equivalent to actually losing a job or job offer due to the pandemic. Therefore, the claimant was correctly determined to be ineligible for PUA benefits beginning with the week ending May 16, 2020 through the remaining period for which he had been paid benefits.

The Tribunal acknowledges that during the hearing the claimant was told that the Division would be asked for documents pertaining to his termination from Zaggs in May 2020 after his day of training. After analyzing the facts presented, however, it became clear that the inquiry was unnecessary. The Tribunal accepted the claimant's testimony regarding Zaggs as true. However, his subsequent hiring by Crew Cut Lawns essentially made the Zaggs situation irrelevant.

B. *Overpayment liability*


During the hearing, the claimant expressed concern at the possibility that in the near future he will likely be faced with an effort by the Department of Labor to recoup the significant amount of overpaid PUA benefits that he received in 2020 and 2021. The claimant, however, must at least be afforded an opportunity for a separate appeal hearing regarding the overpayment liability in which such matters as *estoppel* could be explored.² In addition, he may qualify for a waiver from recoupment.³ The present referral does not encompass these issues, and the present decision does not decide them for or against the claimant.

The Division has advised 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, the claimant can call the BPC at 907-465-2863, 1-888-810 6789, or email to jnu.bpc@alaska.gov.

DECISION

The determination issued on June 21, 2021 is **AFFIRMED**.

Dated: January 25, 2022,



Andrew M. Lebo
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 January 26, 2022, the foregoing decision was served on Luis Torres Daniel (by U.S. 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

² When DETS seeks repayment, the claimant must be informed of the opportunity for a hearing on the overpayment liability, the opportunity to seek a waiver excusing repayment, and any other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.c.

³ The BPC's **overpayment waiver form** can be obtained at:
https://labor.alaska.gov/unemployment/documents/Overpayment_Waiver_Application.pdf.