

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 20-01238

vs.

Referee Decision No. 0043523930-02P

Employer/-None

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This is an appeal of a referee's decision holding the claimant ineligible for and overpaid Pandemic Unemployment Assistance ("PUA") under the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES Act"), created by Public Law 116-136 (March 27, 2020), codified at 15 U.S.C. Chapter 116. Florida law governs the appeals process for PUA. Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter 16-20, Change 1, p. I-14, #54 (Apr. 27, 2020). The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes.

The appeals referee affirmed a determination that held the claimant ineligible for PUA benefits beginning July 5, 2020, and overpaid \$275 in PUA benefits for the benefit weeks ending July 11, July 18, July 25, and August 1, 2020, because she did not become unemployed as a direct result of COVID-19. Because the appeals referee erred by failing to recognize the fact that the claimant was unable to work due to school closures that were the direct result of COVID-19, we reverse.

Eligibility for PUA is to be determined on a weekly basis. 15 U.S.C. §9021(c)(1). To be eligible for PUA benefits, a claimant must be a "covered individual" as defined by the CARES Act, created by Public Law 116-136 (March 27, 2020), codified at 15 U.S.C. Chapter 116. 15 U.S.C. §9021(a)(3). The CARES Act provides that PUA coverage extends to an individual who self-certifies she 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" as a direct result of the COVID-19 public health emergency pursuant to one of the qualifying reasons specifically listed in Section

2102(a)(3) of the CARES Act, codified at 15 U.S.C. §9021(a)(3)(A)(ii)(I) (emphasis added). We emphasize the conjunctive nature of this provision. That is, by the plain language of the statute, coverage extends to those who became unemployed as a direct result of COVID-19 *or* are unable to work as a direct result of COVID-19.¹

The CARES Act provides that a “covered individual” for purposes of PUA includes an individual who self-certifies that she is unable to work because “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.” 15 U.S.C. §9021(a)(3)(A)(ii)(I)(dd). Coverage under (dd) extends to an individual who is not available to work because he or she must stay home because he or she is the primary caregiver for a student(s) who attends a school that has altogether closed its brick and mortar location to students and instead provides only online instruction. Emp. & Training Admin., U.S. Dep’t of Labor, Unemp. Ins. Program Letter No. 16-20, Change 3.

After the end of a scheduled school year, a school is no longer considered closed as a direct result of the COVID-19 public health emergency, for purposes of Section 2102(a)(3)(A)(ii)(I)(dd). Emp. & Training Admin., U.S. Dep’t of Labor, Unemp. Ins. Program Letter No. 16-20, Change 1 at I-10, #39 (April 27, 2020). However, if the facility that the individual relies on to provide summer care for the child is also closed as a direct result of the COVID-19 public health emergency, he or she may continue to qualify for PUA under Section 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act. *Id.*

Although the claimant testified that she was unable to work due to the closure of her children’s schools, which was consistent with her application for PUA benefits,² the appeals referee did not develop the record on that matter and instead held the claimant was ineligible for PUA because she did not become unemployed as a direct result of COVID-19. As shown above, that is contrary to the plain language of the statute, which does not require an individual to become unemployed due to COVID-19 where the individual is unable to work due to COVID-19 school closures.

¹ While our analysis is based on the plain language of the law, we note that informal guidance from the U.S. Department of Labor to states administering the PUA program, a webinar presented on April 30, 2020, confirmed this position.

² The RAAC Clerk is directed to mark the PUA application as R.A.A.C. Exhibit 1.

Because the appeals referee did not develop the facts surrounding the claimant's inability to work due to school closures during the weeks at issue, the Commission directed the claimant to provide sworn responses to interrogatories that would be used to make findings of fact to resolve the matter. §443.151(4)(c), Fla. Stat. (the Commission may modify the appeals referee's findings and conclusions based on additional evidence taken at the direction of the Commission).³

In consideration of the claimant's responses and publications of the school district verifying the information provided by the claimant,⁴ we augment the findings of fact as follows:

The claimant is the primary caregiver for her three school-age children. A school or child care facility is required for the claimant to work. The claimant's children attend [an elementary school and a high school in the] Palm Beach County School District. From July 5, 2020, through August 31, 2020, the claimant's son's summer camp at [his elementary school] was closed, as were all other surrounding summer camps.

The first day of the 2020/2021 school year was August 31, 2020. From August 31 until September 21, 2020, both [of the children's schools] provided only online instruction. As of Monday, September 21, 2020, parents were given the option to return their students to the brick and mortar classroom.

Based on these facts, we conclude the claimant established she was unable to work as a direct result of COVID-19 as provided in (dd) for the weeks ending July 5, 2020, through the week ending September 19, 2020, after which the schools opened their brick and mortar locations for student learning.

³ The parties were provided an opportunity to object to this procedure; no objection was received by the Commission.

⁴ The R.A.A.C. Clerk is directed to mark the claimant's responses to the interrogatories as R.A.A.C. Exhibit 2. We take notice of The School District of Palm Beach County website, <https://www.palmbeachschools.org> (last visited Dec. 1, 2020). We also take notice of the school district's timeline of events, <https://www2.palmbeachschools.org/ebooks/COVID2/#p=5> (last visited Dec. 1, 2020) (verifying the 2020/2021 school year reopening plan). The R.A.A.C. Clerk is directed to mark the screenshot of school's timeline of events as R.A.A.C. Exhibit 3.

Accordingly, the referee's decision is reversed. If otherwise eligible, the claimant is entitled to PUA benefits for the weeks ending July 5, 2020 through September 19, 2020, and was not overpaid for the weeks at issue. The Department shall determine eligibility for any subsequent weeks of unemployment.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman
Thomas D. Epsky, Member
Joseph D. Finnegan, Member

This is to certify that on
12/8/2020,
the above order was filed in the office of
the Clerk of the Reemployment
Assistance Appeals Commission, and a
copy mailed to the last known address
of each interested party.
By: Benjamin Bonnell
Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
REEMPLOYMENT ASSISTANCE PROGRAM
PO BOX 5250
TALLAHASSEE, FL 32314 5250



*148672435 *

IMPORTANT: For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.

IMPORTANTE: Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.

ENPÒTAN: Pou yon intèpret asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tòn, paské tòn limitè pou ou ranpli apèl la.

Docket No. 0043 5239 30-02

Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Claimant

Department

PANDEMIC UNEMPLOYMENT ASSISTANCE APPEAL DECISION

Important appeal rights are explained at the end of this decision.

Derechos de apelación importantes son explicados al final de esta decisión.

Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.

Issues Involved: Pandemic Unemployment Assistance (PUA): Whether and in what amount Pandemic Unemployment Assistance is payable to the claimant, pursuant to 20 CFR, Chapter V, Section 625 and Section 2102 of the CARES Act of 2020, Public Law (Pub. L.) 116-136.

Findings of Fact: The claimant began employment with the employer in July of 2019. The claimant last performed services for the employer as a communications training 911 dispatcher until she became separated from the employer on December 29, 2019.

The Department records show that the claimant filed a claim for Pandemic Unemployment Assistance (PUA) effective July 5, 2020.

The Department records show the claimant received a total of \$1,017 in pandemic unemployment assistance (\$275 for the week ending July 11, 2020; \$275 for the week ending July 18, 2020; \$225 for the week ending July 25, 2020; and \$242 for the week ending August 1, 2020).

Conclusion of Law: In order to be eligible for PUA benefits under the CARES Act, a claimant must be 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. 15 U.S.C. §9021(a)(3).

The hearing record shows that the claimant became separated from the employer for reasons not related to COVID-19. As a result, the claimant is not eligible to receive PUA benefits. The employer did not appear in the hearing.

The law provides that a claimant who was not entitled to benefits received must repay the overpaid benefits to the Department. The law does not permit waiver of recovery of overpayments.

The entry into evidence of a transaction history generated by a personal identification number establishing that a certification or claim for one or more weeks of benefits was made against the benefit account of the individual, together with documentation that payment was paid by a state warrant made to the order of the person or by direct deposit via electronic means, constitutes prima facie evidence that the person claimed and received reemployment assistance benefits from the state.

The record and evidence in this case shows that the claimant has been overpaid \$1,017 in PUA benefits. The claimant was retroactively determined to be ineligible for the receipt of benefits, because the claimant has been found ineligible to qualify for benefits under the program. Thus, the claimant has been overpaid \$1,017, which must be repaid to the Department.

Decision: The determination dated August 20, 2020, holding the claimant not eligible to receive benefits, is **AFFIRMED**. The claimant is also held overpaid \$1,017 in PUA benefits.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on September 10, 2020.

A. LOUIS
Appeals Referee



DAVID HILLEGAS, Deputy Clerk

IMPORTANT - APPEAL RIGHTS: This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the distribution/mailed date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 73B-21.003(4), filing may be made on the next day that is not a Saturday, Sunday or holiday. If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Department and set forth in a separate overpayment determination. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

A party who did not attend the hearing for good cause may request reopening, including the reason for not attending, at connect.myflorida.com or by writing to the address at the top of this decision. The date of the confirmation page will be the filing date of a request for reopening on the Department's Web Site.

A party who attended the hearing and received an adverse decision may file a request for review to the Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. If mailed, the postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the United States Postal Service, or submitted via the Internet, the date of receipt will be the filing date. To avoid delay, include the docket number and the last five digits of the claimant's social security number. A party requesting review should specify any and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.

There is no cost to have a case reviewed by the Commission, nor is a party required to be represented by an attorney or other representative to have a case reviewed. The Reemployment Assistance Appeals Commission has not been fully integrated into the Department's CONNECT system. While correspondence can be mailed or faxed to the Commission, no correspondence can be submitted to the Commission via the CONNECT system. All parties to an appeal before the Commission must maintain a current mailing address with the Commission. A party who changes his/her mailing address in the CONNECT system must also provide the updated address to the Commission, in writing. All correspondence sent by the Commission, including its final order, will be mailed to the parties at their mailing address on record with the Commission.

IMPORTANTE - DERECHOS DE APELACIÓN: Esta decisión pasará a ser final a menos que una solicitud por escrito para revisión o reapertura se registre dentro de 20 días de calendario después de la distribución/fecha de envío marcada en que la decisión fue remitida por correo. Si el vigésimo (20) día es un sábado, un domingo o un feriado definidos en F.A.C. 73B-21.003(4), el registro de la solicitud se puede realizar en el día siguiente que no sea un sábado, un domingo o un feriado. Si esta decisión descalifica y/o declara al reclamante como inelegible para recibir beneficios que ya fueron recibidos por el reclamante, se le requerirá al reclamante reembolsar esos beneficios. La cantidad específica de cualquier sobrepago [pago excesivo de beneficios] será calculada por la Agencia y establecida en una determinación de pago excesivo de beneficios que será emitida por separado. Sin embargo, el límite de tiempo para solicitar la revisión de esta decisión es como se establece anteriormente y dicho límite no es detenido, demorado o extendido por ninguna otra determinación, decisión u orden.

Una parte que no asistió a la audiencia por una buena causa puede solicitar una reapertura, incluyendo la razón por no haber comparecido en la audiencia, en connect.myflorida.com o escribiendo a la dirección en la parte superior de esta decisión. La fecha de la página de confirmación será la fecha de presentación de una solicitud de reapertura en la página de Internet del Departamento.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Servicios de Reempleo; Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. Si la solicitud es enviada por correo, la fecha del sello de la oficina de correos será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio de mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en la que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [docket number] y los últimos cinco dígitos del número de seguro social del reclamante. Una parte que solicita una revisión debe especificar cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reales y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en la solicitud de revisión pueden considerarse como renunciados.

No hay ningún costo para tener un caso revisado por la Comisión, ni es requerido que una parte sea representado por un abogado u otro representante para poder tener un caso revisado. La Comisión de Apelación de Asistencia de Reempleo no ha sido plenamente integrado en el sistema CONNECT del Departamento. Mientras que la correspondencia puede ser enviada por correo o por fax a la Comisión, ninguna correspondencia puede ser sometida a la Comisión a través del sistema CONNECT. Todas las partes en una apelación ante la Comisión deben mantener una dirección de correo actual con la Comisión. La parte que cambie su dirección de correo en el sistema CONNECT también debe proporcionar la dirección actualizada a la Comisión, por escrito. Toda la correspondencia enviada por la Comisión, incluida su orden final, será enviada a las partes en su dirección de correo en el registro con la Comisión.

ENPÒTAN - DWA DAPÈL: Desizyon sa a ap definitiv sòf si ou depoze yon apèl nan yon delè 20 jou apre dat distribisyon/postaj. Si 20yèm jou a se yon samdi, yon dimanch oswa yon jou konje, jan sa defini lan F.A.C. 73B-21.003(4), depo an kapab fèt jou aprè a, si se pa yon samdi, yon dimanch oswa yon jou konje. Si desizyon an diskalifye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap fè demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki peman anplis epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo bay anwo a; Okenn lòt detèminasyon, desizyon oswa lòd pa ka rete, retade oubyen pwolonje dat sa a.

Yon pati ki te gen yon rezon valab pou li pat asiste seyans lan gen dwa mande pou yo ouvri ka a ankò; fòk yo bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, connect.myflorida.com oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit depatman.

Yon pati ki te asiste odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesajè lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon.

Pou evite reta, mete nimewo rejis la ak senk dènye chif nimewo sekirite sosyal demandè a sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

Pa gen okenn kou pou Komisyon an revize yon ka, ni ke yon pati dwe reprezante pa yon avoka oubyen lòt reprezantan pou ke la li a revize. Komisyon Apèl Asistans Reyanbochaj pa te entegre antyèman nan sistèm CONNECT Depatman an. Byenke korespondans kapab fakse oubyen pòste bay Komisyon an, okenn korespondans pa kapab soumèt bay Komisyon an atravè sistèm CONNECT. Tout pati ki nan yon apèl devan Komisyon an dwe mentni yon adrès postal ki ajou avèk Komisyon an. Yon pati ki chanje adrès postal li nan sistèm CONNECT la dwe bay Komisyon an adrès ki mete ajou a tou. Tout korespondans ke Komisyon an voye, sa enkli manda final li, pral pòste voye bay pati yo nan adrès postal yo genyen nan achiv Komisyon an.

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