

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

In the Matter of)
)
TIFFANEY SHANGIN) OAH No. 21-0084-PUA
) Agency No. P20 243

APPEAL DECISION

Docket Number: P20 243

Hearing Date: February 18, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Tiffaney Shangin

None

CASE HISTORY

The claimant, Tiffaney Shangin, submitted a late appeal of a July 20, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on January 28, 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 February 18, 2021. Ms. Shangin testified under oath. At its own election, the Division of Employment and Training Services (DETS) provided only written materials for the hearing, and was not a live participant.

The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of Ms. Shangin's appeal disqualified her from challenging the determination, and if not, whether the Ms. Shangin meets the eligibility requirements of the Act.

FINDINGS OF FACT

Ms. Shangin established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 21, 2020. 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.

Prior to the pandemic, Ms. Shangin annually worked the Chignik salmon fishery with her family, with the season running from approximately May 10 to the end of September. Less significantly for the family income, she was also a member of the

Laborer's Union and did some work in the off-season, including about two weeks of asbestos abatement in the fall of 2019.

Ms. Shangin was not working in the early part of 2020. She was pregnant, delivering her third child on May 10, 2020. She could not, of course, have participated in a salmon fishery beginning May 10, but in any event the Chignik fishery failed to open at all in 2020 due to a disastrous lack of fish.

After Ms. Shangin's PUA claim was denied on July 20, she waited 70 days to initiate and appeal, exceeding the 30-day limit. At the time, she explained the delay by saying "I just got discouraged basically and was still waiting for my captain to get back into town." At the hearing four months later, she recounted vaguely that "it took a while to get through" to telephone in her appeal request. I find that her failure to appeal on time was due to lack of diligence.

In the fall of 2020 Ms. Shangin might have been able to get work (other than asbestos abatement) with the Laborer's Union. However, she and her family all got COVID-19. These circumstances, which happened long after her PUA application was considered, have never been investigated or evaluated by DETS. I make no finding as to whether they represent a work loss attributable to COVID-19.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

Alaska Regulation 8 AAC 85.151

Filing of appeals

(a) An interested party may file an oral or written appeal from a determination or redetermination issued under AS 23.20 and this chapter. The appeal may be filed in person, by mail, or by telephone. An oral or written protest indicating a desire to appeal is an appeal to a referee or the commissioner.

(b) An appeal from a determination or redetermination on a claim for benefits may be filed with a referee or at any office of the division. An appeal must be filed no later than 30 days after the determination or redetermination is personally delivered to the appellant or no later than 30 days after the date the determination or redetermination is mailed to the appellant's last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. *However, the 30-day period may be extended for a reasonable time if the appellant shows that the failure to file within this period was the result of circumstances beyond the appellant's control. [italics added]*

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—

* * *

(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;

* * *

(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; . . .

UIPL 16-20, Change 2 Issued by USDOL July 21, 2020

Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16-20, Change 1, explains that an independent contractor who experiences a "significant diminution of work as a result of COVID-19" may be eligible for PUA. With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

APPLICATION

As the first excerpt above, in order for the 30-day period for her to appeal to be relaxed, Ms. Shangin would have to show that her failure to appeal on time was due to circumstances beyond her control. Ms. Shangin did not show this. Even if she had, the period can only be extended for a “reasonable time,” and Ms. Shangin’s delay more than doubled the appeal time limit. I am unable to consider the merits of Ms. Shangin’s appeal because the 70-day span between the DETS denial and her appeal disqualifies her from pursuing an appeal.

I will note that Ms. Shangin did not make a strong showing of a causal connection between her economic misfortune in the summer and COVID-19. The failure of the Chignik fishery in 2020 is tragic, but it was not related to the pandemic.

Ms. Shangin may be able to file a new PUA claim related to her situation in the fall of 2020, when the family had COVID-19. This could be dependent on the nature of her year-to-year access to casual employment through the Laborer’s Union, and whether that was directly undermined by the family illness. This decision does not preclude Ms. Shangin from filing such a claim or preclude DETS from evaluating it.

DECISION

The determination issued on July 20, 2020 is **AFFIRMED**.

Dated: February 22, 2021

Christopher Kennedy
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 February 22, 2021 the foregoing decision was served on Tiffaney Shangin (by mail and by email to [REDACTED]). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

[REDACTED] _____
Office of Administrative Hearings