

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

In the Matter of)
)
DONALD WILSON) OAH No. 21-0169-PUA
) Agency No. P20 302
_____)

APPEAL DECISION

Docket Number: P20 302

Hearing Date: March 10, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Donald Wilson

None

CASE HISTORY

The claimant, Donald Wilson, timely appealed two September 21, 2020 determinations that 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 or about January 29, 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 March 10, 2021. Mr. Wilson testified under oath. At its own election, the Division of Employment and Training Services (DETS) provided only written materials¹ 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

Mr. Wilson established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 15, 2020. The Division determined that the claimant was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program during two periods: the week ending February 15 through the week ending March 28 (Letter ID L0004805496); and the week ending May 9 and thereafter (Letter ID L0004781099).

¹ Page 8 of the materials provided relates to and provides confidential information regarding another claimant, not Mr. Wilson, and has not been considered.

Mr. Wilson does not challenge the disallowance of the first period, the one before March 28, 2020. The eligibility question centers on the later disallowance, and revolves around a single job offer.

Leading up to the pandemic, Mr. Wilson was just getting back into the workforce after rehabilitation from falling off his roof while building his own house. In February of 2021, he discussed with AK Prosthetics and Orthotics (AKPO) their need for a floor repair. The floor repair job was expected to take about three weeks.

There are two versions of what happened next. According to the recollection of AKPO's office manager in an interview conducted many months later, AKPO engaged Mr. Wilson to do the floor repair as a one-time job to be paid by check. In her version, there was no expectation of holding a long-term position as an employee.

Mr. Wilson says the office manager is mistaken. He says he was referred to AKPO as a person to fix the floor, and that his discussions with AKPO did indeed start out with both sides envisioning that he would come in and fix the floor as gig work. He recalls a three-hour discussion of that job, in which he outlined the work and the materials needed. However, he says the plan changed because the floor was just one of a series of ongoing maintenance and upkeep issues, and it was ultimately decided to take him on indefinitely as a full-time employee.

The documentary record from the time supports Mr. Wilson's recollection. An AKPO letter dated March 11, 2020 shows that Mr. Wilson was offered a job on March 1, 2020 with a start date of April 1, 2020. He was hired as a member of the shop crew. The offer specified that he would receive training on April 1, and then would work a precise but varying schedule on five days per week (M,W,Th,F,Sa). There was no end date. The pay was \$22.00 per hour. The document shows that the offer was withdrawn on March 11, 2020 "due to Covid-19 Workforce reduction and the safety of yourself and the community."

The preponderance of the evidence supports Mr. Wilson's recollection, as documented in the company's letter. The letter is inconsistent with engaging a gig worker to fix a floor. This was a permanent hire to a regular, scheduled position.

AKPO remained on reduced staff for a long period and had to retrench as a business. The deleted position was not reopened.

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—

(l) 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; . . .

APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance 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 one of a list of reasons related to the COVID-19 pandemic. It appears to be undisputed that the claimant had been out of work for some time and could not qualify for a claim for regular unemployment benefits.

It is also undisputed that Mr. Wilson had a firm job offer with a firm start date of April 1, 2020, which was withdrawn due to the pandemic. He is a covered individual by virtue of paragraph (gg), quoted above.

DETS believed that Mr. Wilson stopped being a covered individual the week of May 9, 2020, because his job would have ended anyway prior to that date, even if there had been no COVID-19. The hearing has clarified the facts, as detailed above, and has shown that the job was indefinite. Thus, Mr. Wilson’s status as a covered individual continued and his benefits should not have been terminated.

DECISION

The determination in Letter ID L0004805496, to disallow PUA from the week ending February 15 through the week ending March 28, is **AFFIRMED**. The determination in Letter ID L0004781099, to disallow PUA from the week ending May 9 forward, is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending April 4, 2020 and indefinitely

thereafter, so long as eligibility is not superseded by a subsequent event or circumstance not considered herein.

Dated: March 15, 2021

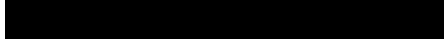


Christopher Kennedy
Administrative Law Judge

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 March 15, 2021 the foregoing decision was served on Donald Wilson (by mail and by email to ). A courtesy copy has been emailed to the UI Appeals Office for recordkeeping.


Office of Administrative Hearings