

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

In the Matter of )  
 )  
TIFFANY MALONE ) OAH No. 21-0329-PUA  
 ) Agency No. P 20350 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P20 350 03

**Hearing Date:** April 1, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Tiffany Malone

None

**CASE HISTORY**

The claimant, Tiffany Malone, appealed a May 21, 2020 determination 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 in February 2021. Under the terms of the referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. The procedures at AS 44.64.060 do not apply.

The issues before the ALJ are whether Ms. Malone filed a timely appeal and whether the claimant is a “covered individual” as defined by the Act and therefore eligible for PUA benefits.

**FINDINGS OF FACT**

The claimant established a claim for PUA benefits effective the week ending March 14, 2020. The Department issued a decision denying her claim on May 21, 2020. Ms. Malone appealed that decision. The Department initially determined that Ms. Malone did not appeal until October 30, 2020, which is more than 4 months after her appeal was due. However, Ms. Malone testified that she called the phone number listed in the Notice of Non-Monetary Issue Determination shortly after receiving that notice. She stated that she normally received mail from Unemployment within a few days, and she recalled sitting on a friend’s porch, opening the letter, and calling the Department right away. She said that she spoke to more than one person on different days and stated her desire to appeal.

The Department’s records, Exhibit 1, page 8, show two contacts from Ms. Malone shortly after the decision was issued. One was on May 26, and the second on May 27,

2020. In the absence of any evidence to the contrary, I find that Ms. Malone did state her desire to appeal on one or both of those dates.

Ms. Malone also testified about two jobs she applied for in 2020. The first was with the US Census Bureau. Ms. Malone received a letter confirming a temporary position. Exhibit 1, page 11. The letter states “Your employment is dependent upon successfully clearing a background investigation. After clearing the background investigation, you will be contacted regarding job specific training depending on the availability of work.” The letter from the US Census Bureau provided instructions on how to sign up for a fingerprint appointment and what information to provide at that appointment for her background check. Unfortunately, Ms. Malone was unable to schedule an appointment because the internet link in her letter did not allow her to sign up for an appointment and the phone number provided was never answered despite multiple phone calls. According to the Census Bureau’s website, some data collection efforts were delayed due to COVID.<sup>1</sup> This explains why Ms. Malone was unable to schedule her fingerprinting and complete her background check. This inability was due to the COVID 19 pandemic.

A more difficult question is whether Ms. Malone would actually have received work but for COVID. The letter specifically states that her training would depend on the “availability of work.” However, it is more likely that this phrase simply means the exact work she would be trained for was unknown, but that the Census Bureau did have some work for her to perform. Otherwise, the letter would more likely have clearly stated that she would be put on a list of eligible employees who would be called on if there was a need. According to the Bureau’s website, this work was scheduled to last from May 13, through July 31, 2020, which is consistent with Ms. Malone’s testimony about how long she expected to be employed.

The second job Ms. Malone applied for was with Subway. Ms. Malone met with a manager for about one hour when she initially dropped off her application. She then had a second interview scheduled but could not get transportation to that interview because public transportation was not available due to the COVID pandemic. All the pandemic was the reason she missed the interview, it is not certain that she would have been offered a position had she attended the second interview.

## **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

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<sup>1</sup> <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html> (accessed April 1, 2021).

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.

### **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—

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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 . . .

### **APPLICATION**

As to the first issue on appeal, 8 AAC 85.151 allows for filing appeals orally. Ms. Malone did ask to appeal the agency’s decision on either May 26 or May 27, 2020, which is within the 30-day appeal period. Her appeal was timely filed.

In addition, Ms. Malone was scheduled to commence employment with the US Census Bureau but that opportunity to work ended when the Bureau suspended in-person

operations due to COVID-19. She is eligible for benefits under section (gg) of the CARES Act, cited above. But for COVID-19, Ms. Malone would have been employed by the Census Bureau from May 13, through July 31, 2020.

Finally, Ms. Malone did not have a definitive offer of employment from Subway. Thus, her eligibility for benefits is not based on her expectation of being employed in that position.

### **DECISION**

Tiffany Malone filed a timely appeal of the May 21, 2020, determination. The determination issued on May 21, 2020 is **MODIFIED**. Tiffany Malone is eligible for benefits beginning the week ending May 16, 2020, through the week ending August 1, 2020. Ms. Malone is not eligible for benefits for the week ending March 14, 2020, through the week ending May 9, 2020.

Dated: April 1, 2021

*Signed* \_\_\_\_\_

Jeffrey A. Friedman  
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 April 1, 2021 the foregoing decision was served on Tiffany Malone (by mail and by email). A copy was emailed to the UI Appeals Office for recordkeeping.

*Signed* \_\_\_\_\_

Office of Administrative Hearings