

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

In the Matter of)
)
DAVID MEHALSHICK) OAH No. 21-0295-PUA
) Agency No. P20 392 03
_____)

APPEAL DECISION

Docket Number: P20 392 03

Hearing Date: March 23, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

David Mehalshick

None

CASE HISTORY

The claimant, David Mehalshick, submitted a late appeal of a September 9, 2020 determination¹ 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 in February 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 23, 2021. Mr. Mehalshick 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 Mr. Mehalshick's appeal disqualified him from challenging the determination, and if not, whether Mr. Mehalshick meets the eligibility requirements of the Act.

FINDINGS OF FACT

Mr. Mehalshick established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 7, 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.

¹ The notice letter is dated September 10, 2020.

Prior to the pandemic, Mr. Mehalshik operated a roadside assistance and tire changing business out of his truck called After Hours Tire. He says he wrote receipts for all services he provided, but has supplied copies of only three from the fall of 2019, testifying that “I couldn’t tell you where any receipts are.” While there is no doubt that he operated this business, the amount or frequency of the work, and the income it generated, cannot be determined. There does not appear to have been any work at all after COVID-19 arrived and, for reasons that are unclear, the demand did not bounce back at all once restrictions were eased. Mr. Mehalshik eventually lost his truck and tire machine, but could still do some tire work by hand if there were any calls from customers.

After Mr. Mehalshick’s PUA claim was denied on September 9 or 10, he recalls that he received notification by email and letter. He did not initiate an appeal until he did so by phone on October 23, exceeding the 30-day limit. At the time, he explained the delay by saying “I wasn’t able to get through to anyone.” At the hearing, he confirmed that he had been frustrated by the long hold times to reach the UI Claims Center to appeal. He did not explain why, if he did not get through, he did not appeal by mail. I find that his failure to appeal on time was due at least in part to lack of diligence.

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]

APPLICATION

As the first excerpt above indicates, in order for the 30-day period for his to appeal to be relaxed, Mr. Mehalshick would have to show that his failure to appeal on time was due to circumstances beyond his control. Mr. Mehalshick did not show this. I am

unable to consider the merits of Mr. Mehalshick's appeal because the 43-day span between the DETS denial and his appeal disqualifies him from pursuing an appeal.

I will note that Mr. Mehalshick did not make a strong showing of significant economic loss due to COVID-19. With his vague testimony and almost complete lack of records, it is difficult to tell how much work he was doing prior to the pandemic. It is also puzzling that demand would have dropped to zero, and stayed there for a full year, if the volume of service calls was any more than a trickle to begin with. This makes it hard to have any confidence that benefits could have been granted even if he had appealed on time.

DECISION

The determination made September 9, 2020, and formally noticed in a notice letter dated September 10, 2020, is **AFFIRMED**.

Dated: March 25, 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 25, 2021 the foregoing decision was served on David Mehalshick (by mail). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.


Office of Administrative Hearings