

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

In the Matter of )  
 )  
ARIEL GUTKINA ) OAH No. 21-0452-PUA  
 ) Agency No. P20 420 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P20 420 03

**Hearing Date:** April 13, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Ariel Gutkina

None

**CASE HISTORY**

The claimant, Ariel Gutkina, submitted a late appeal of a determination dated September 8, 2020 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 February 25, 2021. Under the 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 April 13, 2021. Ms. Gutkina testified under oath. The Division of Employment and Training Services (DETS) provided written materials for the hearing but was not a live participant.

The matter was referred to the ALJ to consider two issues, in sequence: (1) whether the lateness of Ms. Gutkina's appeal disqualified her from challenging the determination, and if not, (2) whether Ms. Gutkina meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

Ms. Gutkina established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 21, 2020. The Division determined that she 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.

For the past several years, the claimant has been a stay-at-home parent to three children. In the spring of 2020, two children attended elementary school in the Anchorage School District. The youngest was three and at home with the claimant.

Ms. Gutkina lived on Joint Base Elmendorf-Richardson (JBER) until her service member spouse was transferred outside Alaska in late May 2020.

The claimant began a small business in January 2020, providing dog care for a friend's two dogs, five to six days per week. She typically drove off-base to get the dogs in the morning and cared for them until the end of her client's work day. On days when the client worked past 8 p.m., he would drive on the base to pick up the dogs, since the claimant's children would be in bed and she could not leave. The client worked past 8 p.m. with some regularity.

The claimant earned \$200 per month for her dog care services. In mid-March, due to COVID-19, JBER restricted access to the base to residents and individuals working there. The client could no longer get on base to pick up his dogs, and the dog care arrangement ended. The claimant did not seek out other clients for the business. In 2020, she earned \$500 from self-employment, January through mid-March. She declared the income on her federal tax return.

After spring break in March 2020, the claimant's children attended school online through the rest of the school year. The claimant moved to South Carolina in late May 2020. The children remained in online school there for the fall 2020 semester.

The claimant asserted PUA eligibility based on COVID-19's impact on her dog care business and her need to be home while her children attended online school in Alaska and South Carolina, which prevented her from finding new employment. She asserted she also would have worked during the summer of 2020 if childcare had been available, but programs were not accepting new children because of the pandemic.

The denial determination in this case was dated September 8, 2020, but the claimant was aware of the denial by September 4<sup>th</sup>. She appealed the determination on September 7, 2020. In a telephone conversation with a Department representative on September 10<sup>th</sup>, however, she withdrew the appeal. The claimant confirmed this history at hearing, stating that her appeal was initially based only on her belief that she could be eligible because of closed schools. After talking with the representative, she concluded that the school closure alone likely was not sufficient, so she withdrew the appeal.

She subsequently talked with a friend who advised that she could be eligible based on impacts to her dog care business. The claimant also reconsidered her views about eligibility based on school closures.

She sent the Division an email on November 5, 2020 explaining that she believed she was eligible based on her self-employment and asking how to proceed. On November 19, 2020, more than 70 days after the denial determination, she initiated a new appeal. The emailed inquiry and formal appeal both exceeded the 30-day appeal limit.

At the hearing, Ms. Gutkina explained that she had not understood PUA eligibility rules well in September and she did not learn about a potential new basis for eligibility until November. She did not think Department of Labor & Workforce Development representatives provided inaccurate or misleading information during her communications with them.

### **PROVISIONS OF LAW - TIMELINESS**

#### **AS 23.20.340 provides in part:**

- (e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant shows that the application was delayed as a result of circumstances beyond the claimant's control.

#### **8 AAC 85.151 provides in part:**

- (b) An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant'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 claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

### **CONCLUSION - TIMELINESS**

To extend the 30-day appeal period, Ms. Gutkina must show that her failure to timely appeal was due to circumstances beyond her control. She did not make this showing. She said she received accurate information when she communicated with Department representatives. A lack of knowledge about the law and the potential bases for PUA eligibility is not a circumstance beyond the claimant's control. In addition, the appeal period can only be extended for a "reasonable time." The delay in this case more than doubled the appeal time limit.

### **DECISION - TIMELINESS**

The claimant's appeal from the determination dated September 8, 2020 is **NOT ACCEPTED** as timely filed. That determination therefore remains in effect. The claimant is not eligible for PUA benefits. The merits are nonetheless addressed to create a record in the event of further appeal.

**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—

(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—

\* \* \*

(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;

\* \* \*

(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; . . .

**Unemployment Insurance Program Letter (UIPL) 16-20, Change 2 Issued by U.S. Department of Labor on 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**

The claimant did not show eligibility based on school closures. She agreed she could have continued doing her dog care work while her children attended online school. She speculated that she might have found other employment if schools had been open, because she then would have been “able to work and available for work” as required by the Act. However, she had taken no steps toward finding other employment either prior to the pandemic or after it began, she had no childcare arranged for her toddler, or for any of the children during the summer school break, and she moved from Alaska to South Carolina in May. For purposes of the PUA program, showing that one is able and available to work requires more than a general intention to work sometime in the future. The claimant did not show she likely would have been working in new employment if schools had been in regular session or if she had been successful in arranging childcare during the summer.

The claimant also did not show she was unable to continue her dog care business as a direct result of the pandemic, or that she experienced a significant diminution of services directly attributable to the pandemic. Base access constraints created a new obstacle but did not prevent from her carrying on the business or offering services to other clients.

If this case were considered on its merits, the determination dated September 8, 2020 would be AFFIRMED. The claimant was not eligible for pandemic unemployment assistance benefits.

Dated: April 16, 2021

*Signed*  
\_\_\_\_\_  
For: Kathryn Swiderski  
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 16, 2021 the foregoing decision was served on Ariel Gutkina (by mail and by email). A copy was emailed to the UI Appeals Office for recordkeeping.

*Signed*  
\_\_\_\_\_  
Office of Administrative Hearings