

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

In the Matter of)
)
LADD WEILAND) OAH No. 21-0496-PUA
) Agency No. P20 570 03
_____)

APPEAL DECISION

Docket Number: P20 570 03

Hearing Date: April 22, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Ladd Weiland

None

CASE HISTORY

The claimant, Ladd Weiland, submitted a late appeal of a determination dated October 13, 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 April 1, 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 recorded hearing took place on April 22, 2021. Mr. Weiland testified under oath. The Division of Employment and Training Services (DETS) provided written materials but was not a live participant. The record closed on April 29, 2021.

The matter was referred to the ALJ to consider two issues, in sequence: (1) whether the lateness of Mr. Weiland's appeal disqualified him from challenging the determination, and if not, (2) whether Mr. Weiland met the eligibility requirements of the Act as of the week ending October 10, 2020.

FINDINGS OF FACT

Mr. Weiland established a claim for Pandemic Unemployment Assistance benefits effective the week ending October 10, 2020. The Division determined that he 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 as of that date.

The claimant was found eligible for and received PUA benefits from the week ending March 14, 2020, through the week ending October 3, 2020. He was eligible because DETS determined he had a firm offer of seasonal employment working for his mother, who owns and operates an Airbnb rental. The Airbnb rental has been operating since

roughly 2017. The claimant has informally helped his mother in past years, but he was not paid for his work. In 2020, his mother planned to hire him for the summer tourist season to do cleaning and maintenance work at the property. She withdrew the job offer because the pandemic resulted in many cancellations and she no longer needed help.

In September 2020, both the claimant and his mother did telephonic interviews with a representative of DETS. Both described the job as a seasonal one that would have ended by October 1.

Based on these interviews, DETS determined that the claimant was no longer impacted as a direct result of COVID-19 starting the week ending October 10, 2020, thereby terminating PUA benefits.

On appeal, the claimant argued that the Airbnb is a year-round business and he expected to perform maintenance and cleaning duties indefinitely. He noted that his mother is elderly and unable to manage those tasks anymore. He also observed that wintertime business was improving prior to COVID-19, due in part to a new ski development in the area. The business grossed roughly \$4500 in 2018, \$10,000 in 2019, and only \$3,000 in 2020 due to COVID-19. To date, it had no 2021 revenue.

The denial determination was dated October 13, 2020. Mr. Weiland received the determination shortly after that date. He was not sure what the determination meant. Within ten days of receiving the letter, he tried to call the Department of Labor and Workforce Development to ask for clarification. He could not get through. He tried calling several other times, also without success. He finally spoke with a representative on November 25th, more than 30 days after the denial determination was issued.

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, Mr. Weiland must show that his failure to timely appeal was due to circumstances beyond his control. He made this showing. He attempted to contact the Department numerous times within the 30-day appeal period so he could get clarification of the October 13, 2020 notice's meaning. Had he been successful in speaking to a representative, he could have appealed the decision during the same telephone call. His inability to connect with an agency representative is a circumstance beyond the claimant's control.

DECISION - TIMELINESS

The claimant's appeal from the determination dated October 13, 2020 is **ACCEPTED** as timely filed.

EXCERPTS OF PROVISIONS OF LAW – PUA ELIGIBILITY

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;

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 of one or more listed reasons related to the COVID-19 pandemic. There is no dispute that the claimant is not eligible for regular unemployment compensation benefits.

The claimant asserts he was directly affected by the pandemic the week ending October 10, 2020 and thereafter because his job maintaining and cleaning his mother's short-term rental was more than a seasonal position. Absent the pandemic, he asserts he would have continued working at the Airbnb year-round.

The weight of the evidence does not support this claim. Both the claimant and his expected employer told DETS on September 25, 2020 that the job was seasonal. No persuasive evidence shows otherwise. To the extent the business experienced a significant loss of income directly attributable to the pandemic, that claim belongs to the business owner. It does not overcome the evidence showing that the claimant's employment was intended to be seasonal.

The claimant does not meet the definition of a covered individual starting the week ending October 10, 2020.

DECISION

The determination dated October 13, 2020 is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program effective the week ending October 10, 2020.

Dated: May 3, 2021


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 May 3, 2021 the foregoing decision was served on Ladd Weiland (by mail and by email). A copy was emailed to the UI Support Team and UI Appeals Office.

Office of Administrative Hearings