

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

In the Matter of)
)
ASISA WILLIAMS) OAH No. 21-0683-PUA
) Agency No. P20 579 03
_____)

PARTIAL APPEAL DECISION AND ORDER OF REMAND

Docket Number: P20 579 03

Hearing Date: May 11, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Asisa Williams

None

CASE HISTORY

The claimant, Asisa Williams, appealed an October 28, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The formal notice of the decision was contained in [REDACTED] (dated October 29, 2020). The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in April 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 May 11, 2021. Ms. Williams 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.

DETS believed Ms. Williams's appeal request was late. The matter was referred to the ALJ to consider two issues: whether the purported lateness of Ms. Williams's appeal disqualified her from challenging the determination, and if not, whether Ms. Williams meets the eligibility requirements of the Act. The first issue can be resolved now. The second is impossible to address on the current record and requires a remand to DETS.

FINDINGS OF FACT -- TIMELINESS

Ms. Williams established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 4, 2020. Insofar as we have a record of the Division's determinations, DETS appears to have paid PUA for a considerable period, but subsequently redetermined that she was not eligible for PUA benefits from the week ending April 11, 2020 through the week ending July 25, 2020 because she either had not filed a test claim for that quarter or had an "eligible regular unemployment claim" during that period. The date of that determination was October 28, 2020.

Ms. Williams had had a confusing series of communications regarding her PUA and unemployment compensation (UC) claims, during which she seems to have been in regular phone contact with DETS. Based on her testimony, it is more likely than not that she had a telephone conversation with DETS on or just after October 28, 2020, in which she was informed of the latest change in outcome, was offered the opportunity to appeal, and expressed her desire to do so. She was told that paperwork relating to the appeal would come to her in the mail. On December 16, 2020, with no appeal paperwork having arrived, she called DETS again¹ and asked about it. At this point, her appeal was recorded as though it was a new appeal.

While certainty on this issue is impossible, I find that, more likely than not, Ms. Williams orally appealed the October 28, 2020 redetermination essentially contemporaneously with being notified of it by DETS, but that her appeal was not logged into the system at that time.

DISPOSITION -- TIMELINESS

Alaska Regulation 8 AAC 85.151(a) provides that an appeal of a redetermination may be filed by means of an “oral . . . protest.” 8 AAC 85.151(b) allows 30 days for such an appeal. Because Ms. Williams has been found to have expressed an oral intent to appeal on or about October 28, 2020, and in any event before November 28, 2020, her appeal was timely.

ELIGIBILITY: INCOMPLETE OR AMBIGUOUS RECORD

Although the record contains no documentation on Ms. Williams’s employment, she apparently worked for the YMCA from approximately October 2019 until February or March 2020, when a variety of COVID-related circumstances caused her employment to end and prevented her from going back to work.

Under the CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102, a person can only be eligible for Pandemic Unemployment Assistance if the person “is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107.” The simple resolution of this case may be that Ms. Williams was eligible for regular or extended unemployment compensation (probably PEUC) based on prior participation in the workforce, and that her eligibility ran from the week ending April 11, 2020 through the week ending July 25, 2020. If so, she would not be simultaneously eligible for PUA during that period, and the DETS redetermination of October 28, 2020 would be

¹ This probably was not her first attempt to get through. It is noted that DETS had called her (and left a message) on December 12, 2020 to “go over eligibility.” It is hard to know why such a call would have been made unless Ms. Williams had previously—before December 12—attempted to reach the department or challenged the eligibility determination.

correct. The following anomalies prevent the tribunal from confidently arriving at that conclusion on the present record, however:

- Exhibit 1, page 6 indicates that Ms. Williams filed a UC test claim for the period at issue, and determined to be **ineligible**. The summary was printed in December 2020, by which time any subsequent redetermination to eligibility would presumably have been in the system.
- Ms. Williams reports being told she was not eligible for UC, and reports no formal redetermination to the contrary. However, a mysterious lump-sum deposit from UC appeared one of her accounts in late summer. Oddly, the money was not deposited into the account where she has previously received UI benefits.
- The dates of purported eligibility do not match up. It is curious that Ms. Williams would be deemed eligible for PUA for the week ending April 4, 2021, then PEUC for the ensuing weeks.

The best solution to these anomalies would be a redetermination of Ms. Williams's PUA and UC eligibility, a clear and consolidated statement of which weeks she is eligible for which program, and an accounting of amounts paid by which program and amounts to be reimbursed to which program.²

DECISION

Ms. Williams's appeal of the determination issued on October 28, 2020 is found to be **TIMELY**. This matter is **REMANDED** for DETS to prepare a consolidated and definitive redetermination as set forth in the italicized paragraph above.

Dated: May 12, 2021


Christopher Kennedy
Administrative Law Judge

APPEAL RIGHTS

The portion of this decision *relating to timeliness* 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.

² If there is a reimbursement balance and Ms. Williams wishes to seek a waiver of repayment, she can apparently do so by contacting Benefit Payment Control at 907-465-2863, at 1-888-810-6789, or by email to jnu.bpc@alaska.gov.

CERTIFICATE OF SERVICE

I certify that on May 12, 2021 the foregoing decision was served on Asisa Williams (by mail and by email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

Office of Administrative Hearings