

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

In the Matter of)
)
FUE T. YANG) OAH No. 21-0701-PUA
) Agency No. P20-585-03

APPEAL DECISION

Docket Number: P20-585-03

Hearing Date: May 12, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Fue T. Yang

None

CASE HISTORY

The claimant, Fue T. Yang, appealed a November 3, 2020 determination, mailed on November 4, 2020, 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 the claimant filed a timely appeal and whether he is a “covered individual” as defined by the Act and therefore eligible for PUA benefits.

FINDINGS OF FACT

The claimant, Fue T. Yang established a claim for PUA benefits effective the week ending March 21, 2020. Mr. Yang owns and operates a coin-operated laundry. The business model for the laundromat requires an attendant on duty to help keep the place clean, assist customers, make change for customers, and sell snacks and supplies. Mr. Yang is the primary worker for that business, working 12 hours a day, seven days a week. When he needs time off, his wife or oldest daughter fills in for him.

Mr. Yang was worried when the government mandates required many businesses to close. He checked with other laundromats and learned that others had closed even though the mandates allowed laundromats to remain open. He was concerned that he would have customers who might expose him to COVID. He is the breadwinner for the family and can’t afford to get sick. In addition, if he got sick, he would bring the

disease home to his family. He wanted to protect himself, his business, and his family. According to the Department's records, Mr. Yang was 43 years old at the time. Exhibit 1, page 5.

Mr. Yang decided that the best course of action was to reduce the opening time of the business to six hours a day. That would allow him some income but limit his exposure to other people. He reduced his hours from mid-March through the end of July 2020.

After being denied benefits, Mr. Yang decided to appeal. Although his recollection of specific dates was somewhat unclear, Mr. Yang was able to establish that when he learned he had been denied, he called the Division to find out why and to explain why he disagreed with that decision. He called again to question the denial and was told to appeal, which he did. When he didn't hear anything further, he called again in December. December 16, 2020 is the date the Division lists as the appeal date. Exhibit 1, page 1. That date is 42 days after November 4, 2020; the date the decision was mailed to him.

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—

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

* * *

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

* * *

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section . . .

UIPL 16-20, Change 2 Issued by USDOL 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.

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.

Alaska Rule of Civil Procedure 6

(c) Additional Time After Service or Distribution by Non-Electronic Mail.

Whenever a party has the right or is required to act within a prescribed period after the service or distribution of a document, other than documents served under Civil Rule 4(h), and the document is served or distributed by non-electronic mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

APPLICATION

The Division acknowledged Mr. Yang's appeal on December 16, 2020, but Mr. Yang credibly testified that he called two times prior to that date to contest the denial. To qualify as an appeal, a claimant must only protest the decision indicating a desire to appeal. Mr. Yang may not have done that with the first telephone call, but he did indicate his desire to appeal with the second call, which occurred "a few weeks" prior to December 16, 2020. Exhibit 1, page 1. Because Civil Rule 6 is incorporated into the time period allowed for an appeal in 8 AAC 85.151, Mr. Yang had until December 7, 2020 to appeal the decision. On a more likely than not basis, Mr. Yang's second call to the Division occurred on or before December 7. Mr. Yang filed a timely appeal.

The next issue is whether Mr. Yang is entitled to Pandemic Unemployment Assistance benefits while his business was on a reduced schedule. UIPL 16-20, Change 2, cited above, clarifies that self-employed individuals can receive PUA benefits if they have a significant diminution of work as a result of COVID-19. The difficult question in this appeal is whether COVID was the cause of Mr. Yang's reduction of work.

Mr. Yang acknowledged that he was allowed to remain open for business. He also testified that he was concerned that if he remained open for twelve hours each day, he might actually have more business because other laundromats were closed.

In a different appeal,¹ a fisherman decided to self-quarantine during the halibut season. In that case, the claimant was 75 years old and had hypertension. He had heard multiple medical professionals advise the general public that older individuals with certain pre-existing conditions, including hypertension, should be particularly cautious and stay home as much as possible. That is because those individuals are at a heightened risk of serious illness or death from COVID-19. The tribunal found that the claimant in that case met the definition of a covered individual because he was advised by health care providers to self-quarantine and he lost business because of that self-quarantine. While the claimant had not been advised to quarantine by his personal health care provider, his doctor did confirm afterwards that self-quarantining was medically necessary and consistent with CDC guidelines.

¹ *In re Kaer*, OAH No. 21-0081-PUA, Agency No. P20-233 (March 8, 2021).

In this case, there is no evidence in the record that Mr. Yang was at a significantly higher risk of serious illness or death than the general adult population, or that his decision to self-quarantine was based on specific advice that people of his age group and medical condition should self-quarantine. This is not to say that his decision to reduce hours was unreasonable. COVID-19 is a serious disease for anyone, and Mr. Yang was reasonably trying to protect himself and his family. However, his personal decision to take these safety measures, and the resulting reduction in income, does not fit within the specific list of reasons established by Congress for receiving Pandemic Unemployment Benefits.

Mr. Yang went back to being open for 12 hours a day in late July. He was given additional time to submit records showing lower income even while he was open full time but did not submit those records. He has not shown any reduction in income for the time he was operating 12 hours a day.

While he is not eligible for PUA benefits during the entire time Mr. Yang operated with reduced hours, he is eligible for some benefits. Mr. Yang was diagnosed with COVID-19 and had to quarantine for two weeks beginning July 11 or July 12, 2020. He had to close his business completely during those two weeks. Mr. Yang has shown he is entitled to benefits for the week ending July 11, 2020, through the week ending July 25, 2020.

The Tribunal finds the claimant meets the definition of covered individual for the purposes of receiving benefits from the PUA program effective the week ending July 25, 2020, through the week ending July 25, 2020.

DECISION

The determination made on November 3, 2020, and issued on November 4, 2020, is **REVERSED** for the week ending July 11, 2020, through the week ending July 25, 2020. The determination is **AFFIRMED** for all other dates.

Dated: May 17, 2021



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 May 17, 2021 the foregoing decision was served on Fue T. Yang (by mail and by email to [REDACTED]). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

[REDACTED]
Office of Administrative Hearings