

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

In the Matter of )  
 )  
CHRISTOPHER RODRIGUEZ ) OAH No. 22-0091-LUI  
 ) Agency No. 21 1994 74,24,33,32  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** 21 1994 74,24,33,32

**Hearing Date:** March 24, 2022

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Christopher Rodriguez

Tamara Carter

**CASE HISTORY**

Christopher Rodriguez timely appealed a September 15, 2021 determination by the Department of Labor and Workforce Development, Benefit Payment Control Audit and Recovery Section (BPC) which denied he was entitled to Unemployment Insurance (UI) benefits under AS 23.20.360 and .362, found he had knowingly made false statements with the intent to obtain benefits so as to be disqualified from future benefits under AS 23.20.387, and found he was liable for repayment of overpaid UI benefits as well as a penalty. The Department of Labor referred the appeal to the Office of Administrative Hearings on January 3, 2022. Under the agreed terms of referral, an administrative law judge (ALJ) hears and decides the appeal under procedures specific to UI appeals. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on March 24, 2022. Mr. Rodriguez appeared telephonically and called his wife, Amor Santos Rodriguez, as a witness. Because criminal prosecution is possible for UI fraud<sup>1</sup>, Mr. Rodriguez was informed of his right to remain silent before testifying. The BPC was represented by Tamara Carter, Investigator 2 in the BPC's UI Investigations Section, who also testified. The BPC's Exhibit 1, totaling 179 pages, was admitted to the record.

The issues before the ALJ are (1) did Mr. Rodriguez fail to report material facts or make false statements of material facts when filing UI claims between December 19, 2020 and April 17, 2021 in violation of the Alaska Employment Security Act? (2) if so, did Mr. Rodriguez do so knowingly and with intent to obtain benefits to which he was not entitled? (3) If so, is Mr. Rodriguez disqualified from payment of future unemployment insurance benefits and for how long? (4) Is Mr. Rodriguez liable for repayment and an additional administrative penalty?

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<sup>1</sup> AS 23.20.485.

## FINDINGS OF FACT

Christopher Rodriguez moved to Anchorage, Alaska in 2006 from Luzon, Republic of the Philippines. He has a Bachelor of Science degree. After moving to Anchorage, he began working for Lowe's Hardware (aka Lowe's Home Center) and has worked steadily as a cashier at the South Anchorage Lowe's for over ten years. He began working there part time, then became full time; however, following his wife's illness, he asked to go back to part-time work. Although he was part time, he often worked nearly 40 hours/week. Mr. Rodriguez's daughter, who works at Providence Hospital, moved to Alaska before him, and also lives in Anchorage. Mr. Rodriguez is seventy two years old and he is still working for Lowe's.

After the onset of the COVID-19 pandemic in March 2020, Lowe's reduced Mr. Rodriguez's hours. Mrs. Santos Rodriguez, Mr. Rodriguez's wife, testified that this caused hardship, as she had not been able to work as a cashier at Walmart since becoming ill. Mr. Rodriguez testified that a coworker named "Nova" told him that he could get unemployment as long as he did not work more than 24 hours per week. Mr. Rodriguez then applied for unemployment benefits.

Although he testified that he did not call the Department of Labor to open his claim, the record (Ex. 1, pgs. 88-95) indicate that he filed his initial claim by a phone call to the UI claim center. He told the claim taker that his most recent employer was Lowe's Home Center (Ex. 1, pg. 92), that his last day worked was December 13, 2020 (Ex. 1, pg. 93) and that he was "working part time" as a "separation reason." (*Id.*) He was eligible to receive up to \$200.00 per week in regular UI benefits. (Ex. 1, pg. 172).

Mr. Rodriguez then went online to file for benefits for the week ending December 19, 2020 – a week that began December 13, 2020. This time, in response to the question "Did you work for any employers?" he checked "No". (Ex. 1, pg. 98). Because he had previously stated his "last day worked" was December 13, 2020, the computer flagged the inconsistency, and he was contacted by the Department of Labor. On January 5, 2021, he told a claims taker that he had worked 24 hours, earning \$357.60 the week of December 13-19. (Ex. 1, pgs. 110, 176). As a result, he had excess earnings for that week, and no UI benefits were payable for that week. (Ex. 1, pg. 174). He did report that he earned wages from Lowe's the remaining weeks of December.

Despite this experience, Mr. Rodriguez continued to respond "No" to the question "Did you work for any employer?" (Ex. 1, pgs. 112 171). As a result, Mr. Rodriguez continued to receive \$200 per week in unemployment benefits, regardless of how much he earned at Lowe's. And, because he received regular UI benefits, Mr. Rodriguez was also paid additional Federal Pandemic Unemployment Compensation between the week ending January 2, 2021 through the week ending April 17, 2021.

Mr. Rodriguez claims that he understood the question "did you work for any employers" to mean "did you work for any *other* employers *than the one you were working for?*" He did not explain why he thought this, or how the Department of Labor would know he was working for Lowe's if he did not report it. He admitted that the

additional money was "important," but insisted that he did not intend to commit fraud.

Ms. Carter testified to the meaning of the documents in Exhibit 1, identifying, for example, which forms were completed by a staff member in a telephone call with Mr. Rodriguez, and which ones Mr. Rodriguez had completed online. She also testified to her conversation with Mr. Rodriguez, memorialized in Ex. 1, pgs. 10-11.

### **EXCERPTS OF RELEVANT PROVISIONS OF LAW**

#### **Alaska Statutes 23.20.360. Earnings deducted from weekly benefit amount.**

The amount of benefits, excluding the allowance for dependents, payable to an insured worker for a week of unemployment shall be reduced by 75 percent of the wages payable to the insured worker for that week that are in excess of \$50. However, the amount of benefits may not be reduced below zero. If the benefit is not a multiple of \$1, it is computed to the next higher multiple of \$1. If the benefit is zero, no allowance for dependents is payable.

#### **Alaska Statutes 23.20.387. Disqualification for misrepresentation.**

(a) An insured worker is disqualified for benefits for the week with respect to which the false statement or misrepresentation was made and for an additional period of not less than six weeks or more than 52 weeks if the department determines that the insured worker has knowingly made a false statement or misrepresentation of a material fact or knowingly failed to report a material fact with intent to obtain or increase benefits under this chapter. The length of the additional disqualification and the beginning date of that disqualification shall be determined by the department according to the circumstances in each case.

(b) A person may not be disqualified from receiving benefits under this section unless there is documented evidence that the person has made a false statement or a misrepresentation as to a material fact or has failed to disclose a material fact. Before a determination of fraudulent misrepresentation or nondisclosure may be made, there must be a preponderance of evidence of an intention to defraud, and the false statement or misrepresentation must be shown to be knowing and to involve a material fact.

(c) The insured worker shall be notified of the department's determination under this section as provided in AS 23.20.340(f) and may appeal the determination as provided in AS 23.20.415.

#### **23.20.390. Recovery of improper payments; penalty.**

(a) An individual who receives a sum as benefits from the unemployment compensation fund when not entitled to it under this chapter is liable to the fund for the sum improperly paid to the individual.

(b) The department shall promptly prepare and deliver or mail to the individual at the individual's last address of record a notice of determination of liability declaring that the individual has been determined liable to refund the amount of benefits to which

the individual is not entitled. The amount, if not previously collected, shall be deducted from future benefits payable to the individual. However, the department may absolve liability to the fund for repayment of all or a portion of those benefits if the department determines that an individual has died or has acted in good faith in claiming and receiving benefits to which the individual was not entitled and recovery of those benefits would be against equity and good conscience.

(c) For similar cause and in the same manner, a claim by another state for the recovery of sums paid as benefits under an employment security law of the other state is recoverable under this chapter if the sums were obtained by an individual who is not entitled and the other state has a comparable provision in its employment security law for recovery of the sums on behalf of this state.

(d) If paid-out benefit sums have neither been repaid by the recipient nor deducted from benefits payable to the recipient within two years following the last day of the year in which payment was made, the commissioner may declare the sums uncollectible and cancel both the resulting shortage and related records.

(e) An appeal from the determination of liability under this section may be made in the same manner and to the same extent as provided by AS 23.20.340 and 23.20.410 — 23.20.470 for an appeal relating to a determination in respect to a claim for benefits. If no appeal is taken to the appeal tribunal by the individual within 30 days of the delivery of the notice of determination of liability, or within 30 days of the mailing of the notice of determination, whichever is earlier, the determination of liability is final and the court shall, upon application of the department, enter a judgment in the amount provided by the notice of determination. The judgment has the same effect as a judgment entered in a civil action.

(f) In addition to the liability under (a) of this section for the amount of benefits improperly paid, an individual who is disqualified from receipt of benefits under AS 23.20.387 is liable to the department for a penalty in an amount equal to 50 percent of the benefits that were obtained by knowingly making a false statement or misrepresenting a material fact, or knowingly failing to report a material fact, with the intent to obtain or increase benefits under this chapter. The department shall deposit into the unemployment trust fund account (AS 23.20.135(a)) a minimum of 30 percent of the penalties collected because of benefits that were obtained by knowingly making a false statement or misrepresenting a material fact, or knowingly failing to report a material fact, with the intent to obtain or increase benefits under this chapter.

#### **8 Alaska Administrative Code 85.104. Claims filing: claimant responsibilities**

(a) A claimant shall provide the division with timely, accurate, and complete information to determine or reexamine the claimant's eligibility for any claim under this chapter. The claimant shall provide information on eligibility

(1) when filing an initial claim;

(2) when requested by the division in order to evaluate a series of continued claims;

(3) in response to a claim audit conducted by the division or its representative;  
or

(4) when moving to a new location.

(b) The division will not allow benefits or waiting week credit for a week if the claimant has refused to provide the division with timely, accurate, and complete information on which to base a determination of eligibility.

(c) The division will treat information provided by a claimant on a telephone claim using the claimant's personal identification number with the same status as if the claimant provided the information on a complete claim form.

### APPLICATION

An individual is eligible for unemployment insurance (UI) compensation under Alaska labor law if the individual's employment is covered by the Alaska Employment Security Act EASA, AS 23.20.005-535 as implemented in 8 AAC 85.010-842 and detailed in the Department's Benefit Policy Manual (BPM).<sup>2</sup> Under those rules the Employment and Training Services division of the Department of Labor and Workforce Development conducts a two-part analysis of each claim filed by an unemployed worker. The first step in the analysis is the "non-monetary determination" of whether the claimant is eligible to for benefits.<sup>3</sup> If the claimant is eligible, the division conducts the second step and issues a "monetary determination" calculating the benefit amount payable to the claimant.<sup>4</sup>

UI benefit claimants are required to be "*timely, accurate, and complete*" in their initial and weekly claims submissions.<sup>5</sup> Inaccuracies can lead to incorrect unemployment claims determinations, including overpayment. In the case of those who are only *partially* unemployed, like Mr. Rodriguez, it is especially important that accurate weekly claim forms are submitted to avoid overpayment due to failure to recognize excess earnings. While only 75% of the wages over \$50 are deducted from weekly benefit, when the individual reports earnings in excess of this amount, no benefit is payable for that week. AS 23.20.360. In Mr. Rodriguez's case, the weekly excess

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<sup>2</sup> The BPM fulfills the mandate in 8 AAC 85.360 that the Department "maintain a policy manual interpreting the provisions of AS 23.20 and this chapter." The Alaska supreme court has referred to the BPM as the "Precedent Manual" and looks to the BPM to interpret labor issues. *See, Calvert, supra; Westcott v. State, Dep't of Labor*, 996 P.2d 723 (Alaska 2000). The BPM is divided into eight sections: Able and Available, Evidence, Labor Dispute, Miscellaneous Misconduct, Suitable Work, Total and Partial Unemployment, and Voluntary Leaving with individual subsections addressing specific issues and incorporating recent updates.

<sup>3</sup> 8 AAC 85.010(a)(14); 8 AAC 85.085.

<sup>4</sup> 8 AAC 85.010(a)(12).

<sup>5</sup> 8 AAC 85.104.

earnings amount was \$316.66 (Ex. 1, pg. 172). In any week that he earned \$316.66 or more, his benefit would be reduced to zero.

1. *Did Mr. Rodriguez make false statements of material fact or fail to report material facts when filing weekly UI claims?*

When completing his weekly claim forms, Mr. Rodriguez was asked a series of questions about the preceding week. Thus, for the week ending December 19, 2020, he was asked “Did you work for any employer?” and Mr. Rodriguez answer “No”. (Ex. 1, pg. 98). However, because he reported his last day worked as December 13 (which is the Sunday of the week ending December 19, 2020) the inconsistency was flagged December 22, 2020, (Ex. 1, pg. 174) and a Division employee contacted him. He reported in that phone call that he had been paid \$357.60 for work at Lowe’s on Sunday December 13 and Saturday December 19, 2020, and on January 5, 2021, the worker “cleared” the inconsistency – but Mr. Rodriguez was not paid for the week ending December 19, 2020 (Ex. 1, pgs. 179, 174). Because he received no UI benefit, he also received no federal pandemic unemployment compensation payment (Ex. 1, pg. 175). Thus, Mr. Rodriguez had direct experience of what happened to his benefits if he accurately reported his wages from Lowe’s.

Nonetheless, in every week thereafter, Mr. Rodriguez continued to answer “No” to the question “Did you work for any employer?” As a result, he continued to withhold the accurate report of his weekly wages, which, in every case exceeded the “excess earnings” amount. Every week, Mr. Rodriguez certified that he provided “true and correct” answers for the week and checked the box indicating he had read and understood the UI fraud advisory.

A material fact is one that is “relevant to the determination of the claimant’s right to benefits. It need not actually affect the outcome of that determination.”<sup>6</sup> The failure to report earnings over \$50.00 a week is always material.<sup>7</sup> I find that Mr. Rodriguez made false statements of material fact (that he did NOT work for any employer) in every weekly claim filed for the week ending December 19, 2020 through the week ending April 17, 2021. I find Mr. Rodriguez failed to report material information (his wages earned at Lowe’s) in every weekly claim filed for the week ending December 19, 2020 through the week ending April 17, 2021.

2. *Did Mr. Rodriguez knowingly make a false statement of a material fact or knowingly fail to report a material fact with intent to obtain or increase benefits?*

Mr. Rodriguez claims that he was told by a coworker he could work up to 24 hours per week and still apply for unemployment benefits. He also claims he understood that the question “Did you work for any employer?” referred to any other employer than where he was working 24 hours per week. When asked how the Division was to know

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<sup>6</sup> *Blas v. State, Dept. of Labor and Workforce Development, Div. of Employment Sec.*, 331 P. 3d 363, 366 (Alaska 2014).

<sup>7</sup> Department Policy and Procedure Manual (DPM), Fraud or Misrepresentation, MS 340.1.C.b.

he was continuing to work for Lowe's if he denied *any* employment, Mr. Rodriguez had no answer. Mr. Rodriguez may have *wished* that the question was written "Did you work for any *other* employer?" but it is not written that way.

Mr. Rodriguez confirmed that he has a university degree (B.S.). Mr. Rodriguez testified that he had previously been employed handling payroll at a large hospital in Luzon. Mr. Rodriguez testified he has resided in Anchorage since 2006. Mr. Rodriguez is employed as a cashier, a position in which honesty and accuracy in handling money is very important. He had access to the UI Claimant Handbook which clearly states he must report gross wages earned each week, whether or not he was actually paid,<sup>8</sup> and Mr. Rodriguez certified that he understood it was his "responsibility to read the UI Claimant Handbook." (Ex. 1, pg. 95). In other words, Mr. Rodriguez is intelligent and sophisticated in his understanding of payments. He had access to pertinent information and he understood he had a duty to read it. Most importantly, he had direct experience early in the UI process of the impact of failing to report wages on his receipt of benefits.

The Alaska supreme court held that "knowingly" as used in AS 23.20.387(b) requires proof of *subjective intent to defraud*.<sup>9</sup> AS 23.20.387(b) does not establish an objective, reasonable person standard. Whether the claimant had a subjective intent to defraud is often a credibility determination.<sup>10</sup>

The fact that the misrepresentation is one that a person of ordinary care and intelligence in the maker's situation would have recognized as false is not enough standing alone to impose liability but is evidence from which the person's lack of honest belief can be inferred. Thus, the reasonableness of the claimant's belief is a matter to be considered in evaluating testimony about whether the claimant believed the representation to be true *and* whether the claimant intended to defraud.<sup>11</sup>

I find that Mr. Rodriguez's testimony is not credible, especially because of his early experience learning that reporting his Lowe's wages meant no benefit was paid for that week. I find that Mr. Rodriguez testified that he didn't speak to anyone at the Department of Labor when he filed his claim, but that in fact his initial claim was filed by phone as indicated by the claim taker's initials in the upper right corner (Ex. 1, pgs

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<sup>8</sup> Before March 2020, the Division provided a hard-copy of the Handbook to claimants. Due to the exponential increase in unemployment assistance claims caused by the COVID-19 pandemic, it can no longer be said that the Division provides a hard copy to every claimant, although Ms. Carter's notes indicate one was sent to Mr. Rodriguez (Ex. 1, pg. 11). However, the Handbook is available on-line at the Division's website and a link provided for electronic claim filers. [abor.alaska.gov/unemployment/documents/uihandbook.pdf](http://abor.alaska.gov/unemployment/documents/uihandbook.pdf) The provisions on reporting wages are at pages 9 through 11.

<sup>9</sup> *Blas*, 331 P.3d at 373-74.

<sup>10</sup> See, e.g., *ARTEC Services v. Cummings*, 295 P.3d 916 (Alaska 2013)(Worker's Compensation Board determination that claimant did not subjectively intend to defraud because she considered her unpaid work at an herbal store to be a hobby was issue of credibility for the Board to determine).

<sup>11</sup> *Id.*

88-95). I find that Mr. Rodriguez understood that if he accurately reported each week he worked for Lowe's that he would have to report his Lowe's wages each week, and he likely would not receive either the UI benefit or the FPUC amount. I find that he withheld the information (that he worked for Lowe's and his wages earned) knowingly and with the intent to collect benefits.<sup>12</sup> I find that his claim of misunderstanding the question "Did you work for any employer?" to mean "Did you work for any other employer than the one you are currently working for?" is not believable. At best, he persuaded himself (and his wife) that it *could possibly be* so interpreted as an excuse for engaging in behavior he knew was wrong.

3. *Is Mr. Rodriguez disqualified from payment of future unemployment insurance benefits and for how long?*

I found above that Mr. Rodriguez knowingly misstated and failed to report material facts for the purpose of obtaining benefits. Therefore, he is subject to disqualification from benefits for the weeks he was paid, and from future UI benefits under AS 23.20.387(a) "for an additional period of not less than six weeks or more than 52 weeks". Mr. Rodriguez made such false statements on weekly claims for 17 weeks (Ex. 1, pg. 6). Because six weeks times 17 is 102 weeks, Mr. Rodriguez's period of disqualification is subject to the statutory maximum of 52 weeks. Mr. Rodriguez is disqualified for 52 weeks, beginning September 15, 2021, the date of the determination of disqualification. 8 AAC 85.380(a).

4. *Is Mr. Rodriguez liable for repayment and an additional administrative penalty?*

Mr. Rodriguez received benefits to which he was not entitled; therefore, he is liable to repay the money improperly paid to him. This obligation does not rest on the finding that he misrepresented material facts. AS 23.20.390(a). Mr. Rodriguez improperly received 17 weeks of UI benefits at \$200 per week, for a total of \$3,400.00 (17x\$200=\$3400). In addition, because he received UI benefits between the weeks ending January 2 and April 17, 2021, a total of 16 weeks, he also received 16 weeks of FPUC benefits at \$300 per week (Ex. 1, pg. 175), totaling \$4,800.00 (16x\$300=\$4800). Mr. Rodriguez is liable to repay both amounts under AS 23.30.290(a).

In addition, because Mr. Rodriguez was found to have knowingly, with intent to obtain those benefits, made false statements of fact and failed to disclose material facts, Mr. Rodriguez is subject to an administrative penalty of 50% of the benefits so obtained. AS 23.20.390(f). The department may, if it chooses following application for a waiver, waive the collection of the penalty (in this case totaling \$4,100.00) but that is a not a

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<sup>12</sup> For all but one week (ending Dec. 26, 2020), the combined benefits he received (Ex. 1, pg. 174-175) exceeded what he earned at Lowe's (Ex. 1, pg. 6). Thus, his combined benefits and wages exceeded what he would have earned working full time at \$14.97 per hour (Ex. 1, pg. 39). Mr. Rodriguez fundamentally argues that he reasonably believed, based on his coworker's statement, he could legitimately receive more in government support than he did working by simply reducing his work hours to 24 hours per week, regardless of his hourly pay, notwithstanding the Claimant's Handbook and his own experience from the week of Dec. 19, 2020. I do not find the asserted belief reasonable.




question presented in this case. This decision is limited to the appeal of the imposition of the penalty, not whether it may be, or should be, waived.

The Division has advised that its Benefit Payment Control (BPC) office handles waiver requests for recoupments. For questions and information regarding options that may be available, Mr. Rodriguez can call the BPC at 907-465-2863, 1-888-810-6789, or email to [jnu.bpc@alaska.gov](mailto:jnu.bpc@alaska.gov).

### DECISION

The determination of September 15, 2021 is **AFFIRMED**.

DATED March 30, 2022.

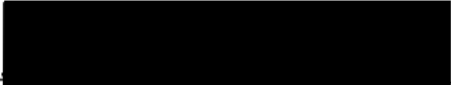
  
Kris Knudsen  
Administrative Law Judge

### 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 <sup>31</sup>30, 2022, this document was sent to: Christopher Rodriguez (by mail and email); UICC Fraud Team (by email). A courtesy copy has been emailed to the DETS UI Appeals Team.

  
Office of Administrative Hearings



*Alaska Department of Labor and Workforce Development  
Appeals to the Commissioner*

Please read carefully the enclosed Appeal Tribunal decision. Any interested party (claimant or the Division of Employment and Training Services [DETS]) may request that the Commissioner accept an *appeal* against the decision (AS 23.20.430-435 and 8 AAC 85.154-155).

A Commissioner appeal must be filed within 30 days after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A Commissioner appeal must be in writing and must fully explain your reason for the appeal. You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner appeals *to the Commissioner's Hearing Officer* at the address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present *written argument* to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an *oral argument*. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

**ALASKA DEPARTMENT OF LABOR  
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COMMISSIONER'S HEARING OFFICER  
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