

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

In the Matter of)
)
PATRICK PARISH) OAH No. 21-0621-PUA
) Agency No. P21-029-03
_____)

APPEAL DECISION

Docket Number: P21-029-03

Hearing Date: May 7, 2021

CLAIMANT APPEARANCES:

Patrick Parish

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Patrick Parish, appealed a November 18, 2020 determination 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 issue before the ALJ is whether the claimant is a “covered individual” as defined by the Act and therefore eligible for PUA benefits.

FINDINGS OF FACT

The claimant established a claim for PUA benefits effective the week ending March 21, 2020. The Division denied his claim, and the first issue on appeal is whether Mr. Parish’s appeal was filed within the 30-day appeal period. The notice denying his claim was issued on November 18, 2020. Mr. Parish lives in Petersburg, Alaska, and gets his mail through general delivery. In November and December of 2020, the post office was only open a few hours each day. Even in normal times, general delivery mail could be delayed, and sometimes Mr. Parish would receive a week’s worth of mail at one time. Mail delivery was even slower in November and December that year, and with the post office open fewer hours, it was even harder to get mail.

Mr. Parish doesn’t remember the exact day he received the November 18 notice, but he contacted the unemployment office by phone immediately after receiving the notice, and believes that he called them the same day. The slow delivery of mail to general delivery recipients in Petersburg in November and December of 2020 was a

circumstance beyond Mr. Parish's control that caused his appeal to be filed one day late.

As to the merits of Mr. Parish's appeal, Mr. Parish has shown he had two opportunities for employment that fell through because of the COVID-19 pandemic. In 2017, Mr. Parish went to work for Tonka Seafoods. Tonka Seafoods processes shrimp and smoked salmon, and operated ten months out of the year. It was closed for maintenance from the end of February to the beginning of May. When the company closed in February, it would tell its workers to come back to work on the following May 1st.

Mr. Parish worked for Tonka again in 2018, and 2019, but was laid off in 2019 because Tonka Seafoods had lost its contract to process shrimp. When he was laid off, he was told to return to work on May 1, 2020. Unfortunately, Tonka Seafoods lost its salmon buyer in 2020 due to COVID-19. Its buyer, Riverboat, primarily sold smoked salmon to restaurants. With restaurants closed due to COVID, Riverboat could not buy smoked salmon from Tonka. The division's notes of its interview with Tonka Seafoods's manager, Wendell Gilberts, reflect different dates for the annual maintenance closure. Exhibit 1, page 16. However, in the absence of being able to ask Mr. Gilberts for clarification, I find that Mr. Parish's description is accurate, and the notes were either entered wrong or reflect a misunderstanding of what Mr. Gilberts was saying. Those notes do confirm that fewer people were rehired in May of 2020 because of COVID, and that Mr. Parish was not one of the few who were rehired.

The second potential job in 2020 was with Coastal Seafoods. However, Mr. Parish did not have a recent history of working for that company. His testimony about being offered a job did not reflect a firm job offer with a definite start date. Mr. Parish has not shown by a preponderance of the evidence that he would have been hired by Coastal Seafoods if the pandemic had not occurred.

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—

(l) 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 . . .

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

As to the first issue, an appeal is due within 30 days after the determination is mailed. In this case, that date was November 18, 2020. However, 8 AAC 85.151(b) provides that when the determination is mailed, an additional three days is added, making Mr. Parish's appeal due on or before December 21, 2020. He filed his appeal orally by telephone one day later. It is reasonable to extend the appeal deadline to account for the unusually slow mail delivery to Petersburg that fall. The slow mail was a

circumstance beyond Mr. Parish's control. With this reasonable extension, Mr. Parish's appeal was timely.

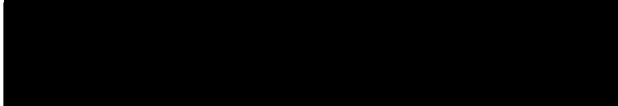
Mr. Parish has also shown by a preponderance of the evidence that he was scheduled to begin employment with Tonka Seafoods on May 1, 2020. He did not have that job as a direct result of the COVID-19 pandemic.

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 May 2, 2020, and that he would have remained eligible to receive PUA benefits until he was disqualified or held ineligible for other reasons.

DECISION

Patrick Parish filed a timely appeal. The determination issued on November 18, 2020 is **AFFIRMED** beginning the week ending March 7, 2020, through the week ending April 25, 2020, and is **REVERSED** for the period beginning the week ending May 2, 2020. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending May 2, 2020, through such time as he is disqualified or held ineligible for other reasons.

Dated: May 10, 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 10, 2021 the foregoing decision was served on Patrick Parish (by mail). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings