

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

In the Matter of)
)
CHARLES SMEATON) OAH No. 21-0619-PUA
) Agency No. P21 036-03
_____)

APPEAL DECISION

Docket Number: P21 036-03

Hearing Date: May 7, 2021

CLAIMANT APPEARANCES:

Charles Smeaton

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Charles Smeaton, appealed a September 24, 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, Charles Smeaton, established a claim for PUA benefits effective the week ending March 21, 2020. Exhibit 1, page 1, shows a completed appeal on December 15, 2020. The decision being appealed was issued on September 24, 2020, more than 30 days before the stated appeal date.

Mr. Smeaton had actually started to appeal well before December 15, 2020. He explained that he called for several weeks before he was able to actually speak to someone to file his appeal. When he called back to check on the status of his appeal, there was no record of the appeal, so he filed it again. All of this occurred several months before the hearing, and Mr. Smeaton was uncertain as to exact dates. However, he did testify credibly as to the difficulty in reaching a person when calling to file his appeal. Given the extraordinary number of claims and appeals being filed during the pandemic, this is understandable. Mr. Smeaton made reasonable efforts to file a telephone appeal within the 30-day appeal period, but circumstances beyond his

control prevented him from actually reaching a person to accept his appeal. Then, again because of circumstances beyond his control, his first appeal was misplaced and he had to file again.

Mr. Smeaton is a seasonal fisherman. For many years he has participated in a Salmon fishery out of Dillingham, Alaska, which typically runs from mid-May through some time in August. He doesn't always work for the same person each year, but has not had trouble finding a position.

In 2020, Mr. Smeaton had arranged to work on a boat owned by a friend of his. He planned to work from about May 18 through August 20, 2020. A few weeks before May 18, 2020, Mr. Smeaton learned that Dillingham had a mandatory quarantine for non-residents coming to that city. He was required to self-isolate for 14 days before starting work. Mr. Smeaton had enough time to get to Dillingham and quarantine the start of his job, but there was no lodging available for him to stay where he could self-isolate.

Mr. Smeaton called a few people to see if they had space for him. The person he would work for also tried to find Mr. Smeaton a place to quarantine. Neither of them was successful. The Division denied his claim, finding that Mr. Smeaton could have quarantined at his mother's home. However, the purpose of quarantining is to be isolated from people who are not members of your own household. Staying with relatives does not count as quarantining if they are not members of your household. Mr. Smeaton explained that when he stays at his mother's home, he does not have his own bedroom. Instead, he sleeps on the couch. He would have been in close contact with the other members of that household.

The record also discloses another possible basis for entitlement to benefits. When he is in Anchorage, Mr. Smeaton does work as a mechanic, and he may have lost business as a result of the COVID 19 pandemic. However, Mr. Smeaton stated during the hearing that he did not wish to rely on this basis for his appeal.

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—

* * *

(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

Mr. Smeaton attempted to file a timely appeal, but encountered problems doing so because it was extremely difficult to call in to file his appeal by telephone. Filing an appeal by telephone is an allowed option but, because of circumstances beyond Mr. Smeaton's control, he could not get through on the phone to someone who could

accept his oral appeal. His first appeal was then misplaced and he had to file again. This was also due to circumstances beyond Mr. Smeaton's control.

Mr. Smeaton has also shown that he had a valid job offer to start fishing in the Dillingham salmon fishery in May of 2020. However, to get to that job, he had to first quarantine in the City of Dillingham for 14 days. He was unable to find a place where he could accomplish that, and the person who had offered Mr. Smeaton the job found someone else who did not have to quarantine. Mr. Smeaton was unable to work the salmon fishery as a direct result of the COVID-19 pandemic and related quarantine requirements.

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 23, 2020, through the week ending August 22, 2020.

DECISION

The determination issued on September 24, 2020, is **AFFIRMED** with respect to the week ending March 21, 2020, through the week ending May 16, 2020, and for the week ending August 29, 2020 through the week ending September 26, 2020. The determination issued on September 24, 2020 is **REVERSED** for the period beginning with the week ending week ending May 23, 2020, through the week ending August 22, 2020. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending week ending May 23, 2020, through the week ending August 22, 2020. This decision does not address any time after the week ending September 26, 2020.

Dated: May 7, 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 7, 2021 the foregoing decision was served on Charles Smeaton (by mail and by email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Appeals Team, & UI Support Team.

Office of Administrative Hearings