

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

In the Matter of)

JOHN DREIZLER)
_____)

OAH No. 21-0687-PUA
Agency No. P21-082

APPEAL DECISION

Docket Number: P21-082

Hearing Date: May 6, 2021

Claimant Appearances:

DETS Appearances:

John Dreizler

None

CASE HISTORY

The claimant established a claim for Pandemic Unemployment Assistance (PUA) benefits effective the week ending February 8, 2020. The Division of Employment and Training Services (DETS) determined the claimant was not a “covered individual” eligible for PUA benefits and issued a Notice of the determination to the claimant December 24, 2020 [REDACTED]. The determination was timely appealed December 28, 2020.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on April 1, 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.

This appeal was heard in a recorded hearing on May 6, 2021. The DETS chose to not to appear and provided only written materials for the hearing. Mr. Dreizler testified under oath but presented no other witnesses.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act from the week ending February 8, 2020.

FINDINGS OF FACT

Mr. Dreizler testified that he was employed by Jerry Timmons, the owner of Timmons Investments. He testified he did all kinds of work for Mr. Timmons, who is also connected to Timmons & Larson, Inc., a property management firm. Mr. Dreizler testified that Mr. Jerry Timmons laid him off May 26, 2020 due to a downturn in business brought about by the coronavirus pandemic. In support of this, he submitted copies of two text messages from Mr. Jerry Timmons that corroborate his claim.

Mr. Dreizler testified that he initially applied for and he thinks he received regular unemployment compensation. He states he applied for PUA benefits because that is

what the website directed him too. He testified the manager at Timmons and Larson, Inc. had it in for him because he is a former federal prison inmate and because he told Mr. Jerry Timmons that his manager was “stealing him blind.” Mr. Dreizler testified that he was being asked to pay back money and that it wasn’t fair to give him the money and then demand he pay it back.

The DETS interviewer recorded that the manager of Timmons and Larson, Alex Federer, stated the claimant, John Dreizler was fired because the firm found drug paraphernalia in a vacant rental unit he was working on. (Ex. 1, pg. 15). The office manager, Faith Speakman, for Timmons and Larson, also stated he was fired. (Ex. 1, pg. 17).

The DETS found Mr. Dreizler ineligible from the beginning of the program (the week ending February 8, 2020) forward. Mr. Dreizler states he has been told to repay money, but it is unclear if this is for regular unemployment compensation or PUA benefits. It is not clear whether there was formal written notice to repay—then or at a later time—or whether Mr. Dreizler has been informed of the opportunity to seek a waiver, the opportunity for a hearing, and any other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.b. No record of request for repayment is contained in the documents submitted by the DETS.

EXCERPTS OF RELEVANT LAW

The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance

(a) DEFINITIONS.—In this section:

...

(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—

...

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(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;

(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;

. . .

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency;

APPLICATION

Mr. Dreizler testified regarding his relationship with Mr. Jerry Timmons, who he appreciated very much for giving him a job. Mr. Dreizler said he worked for Mr. Jerry Timmons personally and took direction from him. He produced a May 27, 2020, text message from Mr. Timmons that clearly states Mr. Dreizler was an employee laid off due to lack of work due to the coronavirus impact on his business, Timmons Investments, and a January 4, 2021 text message from Jerry Timmons seeming to acknowledge the relationship with Mr. Dreizler and stating his (Mr. Timmons's) business had been "ripped apart" by the coronavirus. However, Mr. Dreizler did not produce a W-2 or other tax record showing his employer was Timmons Investments.

However, the record of Mr. Timmons signed statement of himself as owner is compelling, regardless of Mr. Timmons's age. It clearly identifies Mr. Dreizler as having been "laid off from Timmons Investments on May 26, 2020". The tribunal finds the material consisting of interview with Alex Federer less compelling as it does not state that Mr. Dreizler was in fact *not* an employee of Timmons Investment, and because it given six months after the event. In light of Mr. Dreizler's testimony that a number of workers were laid off for cause at the same time, it is possible that there was some confusion regarding Mr. Dreizler's status.

Turning now to the specifics of Mr. Dreizler's PUA claim, the tribunal finds that he was laid off due to a lack of work, which the owner attributed to the coronavirus pandemic. However, Mr. Dreizler was not subject to a quarantine imposed by a government agency due to COVID-19. Section 2102(a)(3)(A)(ii)(I)(ee). He was not advised by a health care provider to self-quarantine due to concerns related to COVID-19. Section 2102(a)(3)(A)(ii)(I)(ff). He had a job and was not prevented from getting to it by the COVID-19 public health emergency. Section 2102(a)(3)(A)(ii)(I)(gg). And, he did not have to quit his job as a direct result of COVID-19. Section 2102(a)(3)(A)(ii)(I)(ii). This leaves only Section 2102(a)(3)(A)(ii)(I)(jj) as a possible basis for PUA eligibility.

Mr. Timmons' Jan. 2021, text message states his business was "ripped apart" by COVID-19, but not that the business is *closed*, or all his employees were laid off. Mr. Timmons' May 2020 message states Mr. Dreizler was laid off because of the impact of COVID-19 on his business, but again, not that the business closed as a direct result of COVID-19. Indeed, Mr. Dreizler testified that Mr. Timmons owns a lot of rental properties in Fairbanks. Therefore, the tribunal cannot find that Mr. Dreizler's place of employment was closed as a direct result of COVID-19. In short, Mr. Dreizler has not established that he was ever eligible for pandemic unemployment assistance benefits.

It is possible, however, that Mr. Dreizler could qualify for a waiver from recoupment of PUA benefits (if paid) or, if a waiver were not granted, that he must be afforded an appeal hearing in which such matters as estoppel could be explored. The present referral does not encompass these issues, and the present decision does not decide them for or against Mr. Dreizler. Similarly, this tribunal does not address any appeal Mr. Dreizler has for regular or extended unemployment compensation or Pandemic Emergency Unemployment Compensation under Section 2107 of the CARES Act.

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

DECISION

The determination issued December 24, 2020 [REDACTED] is AFFIRMED.

Dated: May 11, 2021.

[REDACTED]
For: Kristin Knudsen
Administrative Law Judge

APPEAL PROCEDURE

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 11, 2021 the foregoing decision was served on John Dreizler (by mail and by email). A courtesy copy was emailed to the UI Support Team and the UI Appeals Office.

[REDACTED]
Office of Administrative Hearings