

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

In the Matter of)	
)	
MARTHA HECKLER)	OAH No. 21-2425-PUA
_____)	Agency No. P21 1014 03

APPEAL DECISION

Docket Number: P21 1014 03

Hearing Date: December 28, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Martha Heckler

None

CASE HISTORY

On October 13, 2021, Martha Heckler appealed a September 7, 2021¹ determination by the Division of Employment and Training Services (DETS) 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 on October 28, 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.

The matter was heard in a recorded hearing on December 28, 2021 after being rescheduled. Ms. Heckler appeared telephonically and testified under oath. The DETS was notified of the hearing but chose not to appear or make a representative available by telephone. The DETS relies on the records it submitted and that are admitted as Exhibit 1.

There are two issues before the ALJ. First, the ALJ must determine if Ms. Heckler's delay in filing her appeal may be excused for good cause. Second, the ALJ must determine if Ms. Heckler meets the eligibility requirements of the Act.

FINDINGS OF FACT

1. Proceedings on claim before appeal.

Martha Heckler filed a claim for PUA benefits on June 7, 2020 and was initially paid benefits from the week ending March 21, 2020 through the week ending April 3, 2021.

¹ I note that the Notice of Unemployment Insurance Appeal, Ex. 1, pg. 1, states the date of the determination as "7/7/21" but this is clearly a typo. No July 7, 2021 determination is included in the records provided by the DETS.

On June 7, 2021, the DETS determined that Ms. Heckler had failed to provide substantiation of her employment and denied benefits from January 2, 2021. Ms. Heckler did not appeal this determination but contacted the DETS to provide the information. A second determination that she was not eligible, beginning February 8, 2020, was issued September 7, 2021 based on the following statement by the adjudicator on September 3, 2021:

Misrepresentation of Material facts for the purpose of obtaining benefits for which clmt was not eligible. Failed to provide required documentation to Substantiate S/E for 2019 that was continued in 2020. Please see Investigation Case Notes Attached. Ex. 1, pg. 42.

The basis for this determination appears to be that Ms. Heckler failed to provide a copy of her tax returns, that she was employed in 2018, and that one of the documents she supplied was prepared by a person connected to another fraud investigation. Ms. Heckler corresponded with the DETS employees through October 8, 2021, when she finally was able to supply the 2020 and 2019 tax documents requested by DETS. The DETS did not change its position and Ms. Heckler filed this appeal October 13, 2021.

2. Ms. Heckler's work history and events leading to application for PUA benefits.

Ms. Heckler, aged 71 at the time of the hearing, lives in the community of Knik-Fairview, about 12 miles out S. Knik Goose Bay Road, in a house she and her deceased husband, a big game guide, built.² She testified that she had, for many years, worked as a camp manager and cook for mining and geological exploration crews. She would begin gathering information on the crew make up, location, and season length in late February or March, then prepare shopping lists and equipment lists, then fly out to the camp to set up, manage camp and do the cooking, and then close down the camp when the season was over. In short, spring and early summer were her planning/shopping seasons. Her last job was with NYAC Mining closing camp. NYAC shifted her from status as an employee on payroll to a 1099 worker ("independent contractor") at the beginning of 2019. She continued to work for NYAC in 2019 until February 16, 2019. She came home February 17, 2019 and found her house had lost power, the Toyo stove switch had not reset on, her water pipes froze and then broke, and her house was flooded.

Ms. Heckler is still recovering from this disaster. She related how trying to line up contractor bids and deal with her insurance company became a full-time job and she could not plan for and undertake a 2019-20 camp season. She related the troubles she had with a series of contractors, whose estimates for restoration had started at about \$9,000 and exploded to \$42,000. In particular, the company hired to box up her belongings before the restoration work began, despite a promise not to work without her there, showed up and boxed things up without organization, so that she came home to find everything – including all her records – in boxes labeled simply by the

² The house is now owned by her son.

room things were in. This, she explained, was why she still had difficulty tracking down records.

Ms. Heckler explained that in addition to working directly for geo-exploration and mining companies, she also worked doing local catering for events, like parties and meetings. She stated that she operated under two business names, the Iditarod Trail Café and Marcie’s Hungry Heart.³ She had, at the beginning of 2020, several events lined up – a party for Sam Cameron, a board meeting luncheon and a sweet sixteen party. The first to cancel in March 2020 was Sam Cameron, and the others soon followed. Ms. Heckler explained that she was trying to pull the records of the cancellations together when a “John” at DETS told her that she only needed to produce her tax records. She was finally able to get these from H & R Block⁴ and submitted them to the DETS.

Ms. Heckler frankly admitted that, given her age, recent illnesses, and the difficulties in the past two years, she now finds it hard to remember things or stay “on track” as to recent events, although her memory of the remote past was still good. She is not comfortable using computers or her smart phone and relies on a neighbor’s son to help her. She testified, however, to how she remembered the “lock down” in March 2020, and the rumors of Troopers going up and down Knik Goose Bay Road to make sure people stayed in their houses and locals telling her “they” were going to “spray” along the road. Ms. Heckler testified that she now survives on a very limited income: \$914/month in her Social Security pension, \$150/month Alaska senior benefit, and \$264/month in food stamps from state adult public assistance. As she said, her recent electric bill was \$585 from MEA and she didn’t know how she was going to pay it.

The DETS does not challenge now the authenticity of Ms. Heckler’s tax records. They show that Ms. Heckler had gross sales of \$5,109 and gross income of \$3,507 from self-employment for food service contracts in 2019 with adjusted profit of \$2,722 (Ex. 1, pg. 35). She reported a business income of \$2,065 in 2020 (Ex. 1, pg. 57), although the 2020 tax information supplied by the DETS did not include the 2020 schedule C.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

THE CARES ACT OF 2020, PUBLIC LAW 116-136, TITLE II, SEC. 2102 PANDEMIC UNEMPLOYMENT ASSISTANCE, AMENDED BY CONSOLIDATED APPROPRIATIONS ACT, PUBLIC LAW 116-260, DIV. N, TITLE II, SUBCHAPTER IV, SEC. 241 (A), CODIFIED AS 15 U.S.C. § 9021:

(a) DEFINITIONS.—In this section:

. . .

(3) COVERED INDIVIDUAL.—The term “covered individual”—

³ She explained that “Healthy Heart” was a typo.

⁴ The name of the preparer was “HRB Tax Group, Inc.” which is the franchisor for H & R Block tax services since 1955.

- (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 . . .
 - (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;
 - . . .
 - (jj) the individual’s place of employment is closed as a direct result of the COVID- 19 public health emergency; or
 - (kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or
 - (II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (I); and
 - (iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which

an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; and

(B) does not include—

- (i) an individual who has the ability to telework with pay; or
- (ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20, CHANGE 1.

Guidance issued by the Secretary of Labor on April 27, 2020 added eligibility provisions under Section 2102(a)(3)(A)(ii)(I)(kk): An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19 reasons listed above, including an independent contractor who experiences a “significant diminution of work as a result of COVID-19.

UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20, CHANGE 2

Guidance issued by the U.S. Secretary of Labor on 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. (Emphasis added).

APPLICATION

1. Timeliness of Appeal

Ms. Heckler appeals a determination mailed to her on September 7, 2021. Her appeal was due Monday, October 10⁵; it was filed October 13, 2021, after she had complied with the instructions of DETS staff and was informed that the additional information (her tax returns) would not result in a change of position. I find that Ms. Heckler's expectation that she needed only to file tax records was a result of her conversations with "John" and that the three-day extension of time is reasonable in the circumstances.

2. Merits of Appeal

Ms. Heckler's appeal presents a close case, but not one that should be characterized as fraud. Ms. Heckler was a credible witness to her work history. She had two sources of income: she worked as a camp manager/cook for field camps and she worked in her "off" season doing local catering for events. The slight inconsistencies in the name of her catering business do not indicate fraud, nor the fact that she worked as a direct employee before NYAC made her a "1099" worker in 2019. Ms. Heckler's tax records were prepared by a reputable firm and support her account of events.

Those familiar with the operation of field camps understand the amount of preparatory work (usually unpaid) that experienced camp cooks undertake before they "fly out," and those familiar with damage claims can understand how coping with significant repairs and insurance could derail a single person's ability to undertake a field season. The immediate disaster of the 2019 house flood impacted Ms. Heckler's ability to work a field season as camp manager/cook, her most significant employment over the last several years. She was compelled by the need to pursue and oversee the remediation and repair of her home to give up the 2019-20 field season. Therefore, loss of that field season cannot be attributed to COVID-19.

Ms. Heckler did not establish that she had a camp manager/cook contract for the 2020-21 season that would have had her working on planning for a 2020 departure to a field season at the time the COVID-19 public health emergency was declared, or one for 2021-22. She had, however, resumed providing local catering services, and had jobs lined up for the spring when the COVID-19 public health emergency was declared. Ms. Heckler's tax records show that she had about a 25% drop in self-employment earnings, sufficient to be considered substantial or a "significant diminution" in 2020 attributable to cancellations resulting from the COVID-19 public health emergency. While both 2019 and 2020 represent drops from her 2018 income, in 2021, however, the state can no longer attribute the drop in Ms. Heckler's catering income to the COVID-19 public health emergency. She was not a resident of a community subject to local "hunker down" orders. Neither the local Knik-Fairview community (which is unincorporated) nor the Matanuska-Susitna Borough restricted

⁵ 8 AAC 85.151(b).

events that she could cater. And, while Ms. Heckler may continue to seek employment with mining and geo-exploration companies, the impact of the flood on her ability to leave her home for the field season undoubtedly persists, as she testified. This was not an event directly caused by COVID-19. Also, she was unable to point to any specific cancellations of field season contracts or employment offers for 2021 attributable to the COVID-19 public health emergency.

I conclude, based on Ms. Heckler's credible testimony and the record produced by DETS that Ms. Heckler was entitled to PUA benefits through the week ending January 2, 2021 as a "covered individual" under 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk). I conclude that she was not entitled to PUA benefits after the week ending January 2, 2021.

Because Ms. Heckler was paid PUA benefits through the week ending April 10, 2021, this decision leaves her with a substantial overpayment of approximately \$5,629. Ms. Heckler was legitimately very concerned about the impact repaying her PUA benefits could have on her. However, Ms. Heckler may apply for a waiver of the recoupment of this overpayment. If a waiver is not granted, she must be given a separate appeal hearing on that issue. The present referral does not encompass these issues, and the present decision does not decide them for or against Ms. Heckler.

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

DECISION

The determination of September 7, 2021 (Letter ID: L0015793210) is **MODIFIED**. Ms. Heckler, as a "covered individual," is entitled to PUA benefits from the week ending March 21, 2020 through the week ending January 2, 2021; Ms. Heckler is not eligible for PUA benefits from the week ending January 9, 2021 and continuing thereafter.

Dated: January 5, 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 January 10, 2022, the foregoing decision was served on Martha Heckler (by mail and email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings