

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

In the Matter of)
)
JUSTIS HULSE) OAH No. 21-2423-PUA
) Agency No. P21 1010 03
) and
) OAH No. 21-2432-PUA
) Agency No. P21 1018 03

APPEAL DECISION

Docket Number: P21 1010 03

Hearing Date: November 23, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Justis Hulse

None

CASE HISTORY

The claimant, Justis Hulse, appealed two Division of Employment and Training Services (DETS) determinations on October 13, 2021. The first determination, (P21 1010 03), was issued August 5, 2021 and denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136 beginning from the week ending January 2, 2021 because the claimant failed to substantiate his employment. The second determination, (P21 1018 03), was issued October 13, 2021 and denied eligibility for PUA benefits beginning November 28, 2020. The Department of Labor referred both appeals 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.

Both appeals were heard in a combined recorded hearing on November 23, 2021. Mr. Hulse appeared telephonically from Soldotna, Alaska and testified under oath. Although notified of the hearing, the DETS chose not to appear or make a representative available by telephone. It relies on the documents it submitted which were admitted as Exhibit 1 with each appeal.¹ The record remained open until December 7, 2021 to allow Mr. Hulse to submit documents in support of his appeals.²

¹ To distinguish the documents, those submitted with P21 1010 03, comprised of 21 pages, will be referred to as Es. 1, pg. X/21; those documents submitted in P21 1018 03, comprised of 28 pages, will be referred to as Ex. 1, pg. X/28.

² DETS was requested to provide a summary explanation of the payments Mr. Hulse received. No *new* information was received in this summary that was not already in the record of P21 1018 03.

There are three issues before the ALJ. The first issue is whether the claimant's appeal of the August 5, 2021 determination is barred because his appeal was filed more than 30 days after the determination was issued. If it is not, the second issue is whether the claimant sufficiently substantiated the employment on which his claim for PUA benefits rested. The third issue, which is the subject of a timely appeal, is whether the claimant meets the eligibility requirements of the Act beginning November 28, 2020.

FINDINGS OF FACT

Justis Hulse applied for Pandemic Unemployment Assistance benefits on November 25, 2020, effective November 22, 2020. Mr. Hulse explained that he had been getting letters for the Department of Labor that he was eligible to apply for PUA benefits, so he decided to do so. He did not, he explained, really understand the online application but he did not, he repeatedly stated, ever intend to receive money he should not have. He thought that if he didn't qualify, he would not be found eligible, and "bang! I got this money."

Mr. Hulse, who is 32 years old, is a regular deckhand aboard the *F/V Alaskan Dream*, a 115-foot tender owned by his grandparents' corporation based in Soldotna. He works the Bristol Bay fishery and then the Valdez area fishery, as the tender is on contract to Icicle/OBI. His father is skipper of the *F/V Alaskan Dream*. While working as a deckhand, he receives a daily wage, not a share. The record shows that in the third quarter of 2019, he earned reportable wages of \$13,000 and in the third quarter of 2020, he earned reportable wages of \$14,700, both from Alaskan Dream Ventures, Inc. (Ex. 1, pg. 8/21).

Mr. Hulse's usual practice is to collect unemployment after the tendering season ends. In 2020, he began collecting regular unemployment compensation in February of 2020 and continued to receive it through June 20, 2020 at \$220/week. He then began collecting Pandemic Emergency Unemployment Compensation (PEUC) from the week ending June 27, 2020 through the week ending November 14, 2020 at \$220/week. He was then paid extended unemployment benefits (EB) from November 28, 2020 through January 23, 2021 at \$220/week. He then began receiving PEUC benefits again from January 24, 2021 through June 26, 2021.

Mr. Hulse testified he had been receiving letters that told him he may be eligible to receive PUA benefits. In the gap between his PEUC benefits ceasing, and before EB benefits were paid, Mr. Hulse filed an application for PUA benefits November 25, 2020. Mr. Hulse testified that he thought he was qualified for PUA under Section 2102(a)(3)(A)(ii)(I)(ff) of the CARES Act, because his doctor advised him to avoid COVID-19. He checked the box stating that he was unable to reach his place of employment because he had been advised by a health care provider to self-quarantine. Nothing further seemed to have happened regarding PUA until he was asked December 17 to verify his identity (Ex. 1, pg. 24/28). For months afterwards, nothing happened until he was suddenly paid a large lump sum in May 2021.

Unfortunately, Mr. Hulse was paid PUA benefits in two lump sums, on May 5, 2021 for the period from the week ending November 28, 2020 through December 5, 2020; and a second lump sum May 6, 2021 for the period from December 6, 2020 through May 1, 2021. Thereafter, he received weekly payments of \$133.00 through June 26, 2021. Meanwhile, May 6, 2021 he was asked to “answer some questions” by August 4, 2021, and Mr. Hulse did not respond to this request (Ex. 1, pg. 10-11/21). As he explained, he was working aboard the tender, *F/V Alaskan Dream*.

The DETS notes contain references to technicians explaining PEUC (pandemic emergency unemployment compensation) and EB (extended benefits) to Mr. Hulse in January 2021 and November 2020 respectively.

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”—

(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—

...

(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;

...

(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).

APPLICATION

TIMELINESS.

Mr. Hulse’s appeal encompasses two related determinations. The first, issued August 6, 2021, relates to “employment substantiation.” It arrived while Mr. Hulse was working aboard the fishing tender *F/V Alaskan Dream*, and was not filing for unemployment, so not accessing his account. Because this determination is subordinate to the timely appeal of the determination made October 13, 2021, I find that the appeal filed October 13, 2021 encompasses both and is therefore timely.

MERITS.

It is clear that Mr. Hulse was mistakenly paid PUA benefits. He was disqualified from receiving PUA benefits under 15 U.S.C. § 9021(a)(3)(A)(i) because he was “eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107” of the CARES Act and he had not exhausted his eligibility. Mr. Hulse’s PEUC benefits ceased and, before he was paid extended benefits, he filed the application for PUA. Then, he called the DETS and a staff member took an EB application (Ex. 1, pg. 18). He was not actually paid PUA benefits until six months after he applied. There is no evidence that anyone checked that Mr. Hulse was a UI or PEUC benefit recipient before paying the PUA benefits in lump sums in May 2021.

Mr. Hulse was never eligible for the PUA benefits that he received because he was eligible for (and received) PEUC and EB benefits over the same period covered by the PUA benefits. Unfortunately, this leaves Mr. Hulse with a substantial overpayment of benefits. The present referral does not address any issues regarding repayment or recoupment, and the present decision does not decide them for or against Mr. Hulse.

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

DECISION

The determination of October 13, 2021, (Letter ID: L0016134192), is **AFFIRMED**.

Dated: December 27, 2021,



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 December 27, 2021, the foregoing decision was served on Justis Hulse (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