

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

In the Matter of )  
 )  
TERRY ANN TAHA ) OAH No. 21-2464-PUA  
 ) Agency No. P21 1031 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 1031 03

**Hearing Date:** December 16, 2021  
RC December 30, 2021

**CLAIMANT APPEARANCES:**

Terry Ann Taha

**DETS APPEARANCES:**

None

**CASE HISTORY**

This is Terry Ann Taha’s second appeal regarding aspects of her eligibility for Pandemic Unemployment Assistance (PUA) benefits.

Her first appeal challenged Letter ID L0006229464, dated November 16, 2020. The Department of Labor and Workforce Development referred that appeal to the Office of Administrative Hearings in May of 2021 and, after a full, recorded hearing with sworn testimony, Administrative Law Judge Kennedy issued a decision on June 8, 2021 that made certain findings of fact regarding her self-employment and remanded the case to the Division of Employment and Training Services (DETS) for evaluation of eligibility based on those facts.<sup>1</sup> That decision will be referred to as *Taha I*.

Although the record supplied by DETS was incomplete in this regard, it appears that DETS determined that Ms. Taha was eligible for PUA in 2020 based on the self-employment established in the *Taha I* decision. About the same time, however, the agency seems to have decided internally that the same self-employment might not support benefits in 2021 because the self-employment was not documented as required in the Continued Assistance Act and UIPL 16-20, Change 4. Nonetheless, on June 18, 2021 the agency paid Ms. Taha, in a lump sum, more than \$12,000 in benefits for the first six months of 2021. After a further delay of three months, DETS issued a second denial on September 20, 2021 (Letter ID L0016030272), denying benefits beginning the week ending January 2, 2021 on the basis that Ms. Taha did not “substantiate your employment/self-employment as required by the Continued Assistance Act, Public Law . . . 116-260.” DETS now seeks repayment of the 2021

---

<sup>1</sup> *In re Taha*, P21 103, OAH Case No. 21-0949-PUA.

benefits that it had just paid out in a lump sum. Ms. Taha initiated her second appeal the following month.

The matter was heard in a recorded hearing on December 16, 2021. Ms. Taha testified under oath. At its own election, the Division of Employment and Training Services (DETS) provided only written materials for the hearing and was not a live participant.

The issue before the ALJ is whether the second appeal was timely and, if so, whether the claimant meets the documentation requirements for PUA for the period beginning the week ending January 2, 2021.

### **TIMELINESS**

Ms. Taha's appeal was flagged as untimely. This seems to have happened because Alaska Regulation 8 AAC 85.151 provides a 30-day window for appeal, and a phone call with Ms. Taha in which she stated her appeal was logged on October 28, 2021, more than thirty days after the September 20 redetermination decision.

Regulation 8 AAC 85.151 provides that the appeal time limit is to be computed in accordance with Rule 6 of the Alaska Rules of Civil Procedure. Rule 6(c) provides that for time limits computed from notices distributed by mail, "three calendar days shall be added to the prescribed period." Ms. Taha's notice was distributed by mail, and therefore the appeal deadline for her would be 33 days after September 20, 2021, making it October 23, 2021. However, October 23 was a Saturday, and under another provision of Rule 6, this moved the deadline two more days, to October 25.

DETS logged the appeal as being made on October 28, which would be three days late. However, in the case record is a polite email from Ms. Taha from October 27, saying that she had been trying to appeal by phone for weeks and had not been able to get through to a person or leave a voicemail. She gave a number to be called back. The October 27 email was apparently what prompted the Division to call her on October 28 and take her appeal over the phone.

In the October 27 email, as well as in the October 28 phone call, Ms. Taha referred to a prior, similar email she had sent. A contact log in the record indicates this probably occurred before October 20, 2021, since DETS apparently attempted to call her back on that date but did not succeed in doing so, for reasons that are not displayed in the copy of the contact log that DETS supplied for the record.

I infer from this history that Ms. Taha had been diligently trying to get through to the agency to appeal from well before the appeal deadline, and simply had not been able to get through or get a successful callback. The appeal should therefore be treated as timely.

## FINDINGS OF FACT - MERITS

Rightly or wrongly, the decision of June 8, 2021 determined the following facts:

- [The Taha family has] a taxicab business that has been operating for more than two decades.
- There are three taxicabs, two owned solely by the business and one in partnership with another person.
- The business is nominally a sole proprietorship in the name of Ms. Taha's husband. However, Ms. Taha was a major initial investor in the business (having contributed one of the three taxi permits, worth about \$133,000 at the time it was contributed), and in normal she does important ongoing work for the business as its bookkeeper and manager (about 40 hours per month). It is likely that she would be recognized by a court as having an equitable interest in the business.
- Ms. Taha has never been formally paid by the business, but the family jointly lives on its proceeds.
- The business fully supported the family in 2019. In 2020, the pandemic reduced demand for taxi service to zero in April and May, and drastically undermined it in later months. Business has recently begun to rebound.<sup>2</sup>

These facts, therefore, are established. They were established based on sworn, recorded testimony.

DETS later sought documentation from Ms. Taha to substantiate the self-employment. The request was based on a requirement for PUA eligibility added by the Continued Assistance Act in late 2020. So far as the record indicates, Ms. Taha was not told to send in anything in particular, and she sent in a sworn taxicab permit application. She also supplied figures from a Schedule C, but did not send it in.

### EXCERPTS OF RELEVANT PROVISIONS OF LAW

#### UIPL 16-20, Change 4 (Issued by USDOL January 8, 2021)

**b. New Requirement for Individuals to Submit Documentation of employment or Self-Employment.** Section 241 of the Continued Assistance Act creates a new requirement for individuals to submit documentation substantiating employment or self-employment. Refer to section C.2. of Attachment I to this UIPL for additional detail.

\* \* \*

---

<sup>2</sup> *Taha I* at page 2.

**Filing Continued Claims for PUA.** Individuals who applied for PUA before January 31, 2021 and receive a payment of PUA on or after December 27, 2020 (regardless of which week ending date is being paid), are required to provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, within 90 days of application or when directed to submit the documentation by the State Agency, whichever is later. The deadline may be extended if the individual has shown good cause under state UC law.

\* \* \*

Proof of self-employment includes, but is not limited to, state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual’s self-employment.

### **APPLICATION**

This case presents only one issue: Has Ms. Taha produced “documentation substantiating the . . . self employment” as required by the Continued Assistance Act. “Documentation” is not limited to any particular type of document. Affidavits are permitted. The purpose of the requirement is to deter fraud, enabling investigators to track down a story and hold the claimant accountable if it is false.

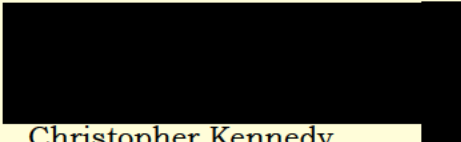
The June 8, 2021 decision is documentation. It is a document *at least* equivalent to an affidavit. It is based on underlying sworn testimony, of which there is a complete audio record. If the testimony is false, the claimant can be held accountable. Because DETS has the June 8, 2021 decision, the documentation requirement of the Continued Assistance Act has been met.

The outcome might be different had DETS raised the documentation issue prior to the hearing in June of 2021. In that situation, Ms. Taha would not be permitted to bootstrap her claim with a document—the future decision—that had not yet been created. However, by the time DETS came up with this issue, there was a document in the record meeting all the requirements of the Act.

### **DECISION**

The appeal is timely. The determination made on September 20, 2021 (noticed in Letter ID L0016030272) is **REVERSED**.

Dated: January 5, 2022


  
Christopher Kennedy  
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 5, 2022 the foregoing decision was served on Terry Ann Taha (by mail and by email). A copy was emailed to the UI Support Team, UI Technical Team, and UI Appeals Office.

 \_\_\_\_\_  
Office of Administrative Hearings