

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

In the Matter of)	
)	
VERDA BICE)	OAH No. 21-2570-PUA
_____)	Agency No. P21 1057 03

APPEAL DECISION

Docket Number: P21 1057 03

Hearing Date: February 15, 2022

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Verda Bice

None

CASE HISTORY

The claimant, Verda Bice, filed a late appeal of a May 24, 2021 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 beginning the week ending January 2, 2021. The Department of Labor referred the appeal to the Office of Administrative Hearings on December 20, 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 scheduled for hearing on January 25, 2022, but Ms. Bice did not respond to calls made to the telephone number in the Office of Administrative Hearings' record. After a Notice of Opportunity to Show Good Cause for Failing to Participate was issued, Ms. Bice responded, explaining her phone had been stolen and she had a new telephone number. The hearing was rescheduled to February 15, 2022. Ms. Bice appeared telephonically and testified under oath. Although notified of the hearing, the DETS did not appear and relies on the documents it submitted that are marked, and admitted without objection, as Exhibit 1. The record remained open to 4:30 p.m. on February 18, 2022, to allow Ms. Bice to provide a document. No documents were received from Ms. Bice.

There are two issues before the ALJ. The first issue is whether Ms. Bice had good cause for the delay in her appeal, so as to allow extension of the 30-day appeal period. The second issue before the ALJ is whether the claimant met the eligibility requirements of the Act after the week ending January 2, 2021.

FINDINGS OF FACT

Verda Bice filed a claim for PUA benefits at the end of June 2020, based on her self-certification that she had been offered a job by Norma Reese following an interview at the Baxter Senior Living Center. She testified that Ms. Reese told her that she would hire her as a personal care attendant at \$20.00/hour, if not at the Center, then for one of the private patients Ms. Reese had. When the Baxter Senior Living Center closed to visitors and others not currently employed, she was notified that her services would not be needed. Although Ms. Bice called Ms. Reese, she did not follow up with an offer to place Ms. Bice privately. Ms. Bice has since learned that Ms. Reese is no longer employed at Baxter Senior Living Center. Ms. Bice stated that she has lost touch with Ms. Reese and no longer has her telephone number. Ms. Bice is herself currently employed at Merrill Field Airport.

Ms. Bice applied for PUA benefits in June 2020. Ms. Bice testified that Ms. Reese was called by the DETS staff, and that Ms. Reese verified the job offer on the telephone.¹ Ms. Bice testified she knows this is the case because she was also a party to the call. Ms. Bice ultimately was paid PUA benefits totaling \$5,029.00 (Ex. 1, pg. 10) for the period beginning the week ending March 21, 2020 through the week ending December 12, 2020.² The DETS determined that Ms. Bice (who had considerable difficulty supplying a clear, legible copy of her ID and her social security card) had failed to provide documentation substantiating the offer of employment as required by the December 27, 2020 amendment to the CARES Act of 2020, and therefore was not eligible for PUA benefits from the week ending January 2, 2021.

Ms. Bice testified that she contacted the DETS after she received the Notice of the Determination issued May 24, 2021. The record shows a telephone call was received from Ms. Bice on June 11, 2021, and that she was told “that the docs she submitted did not substantiate her pending employment, told her we need pending employment letter, gave PUA email.” Ex. 1, pg. 13. No appeal was recorded. Ms. Bice called again September 21, 2021, and the DETS staff noted “Clmt said she is going to send in docs for her ES.” Ex. 1, pg. 13. Again, no appeal is recorded. The next call is November 18, 2021, when the note states “Took ES appeal with claimant over the phone.” Ex. 1, pg. 13. Ms. Bice testified she had lost touch with Nancy Reese and that she was unable to get a letter from her. Ms. Bice also said she knew where Ms. Reese lived and would submit a statement from her to the ALJ, but no statement was received.

¹ The records provided by the DETS do not include the notes of the interview.

² Ex. 1, pgs. 24-25. This exhibit shows payment in May 2021 for this period. It also shows gaps that are not explained, but are marked “payment returned,” evidently because the account established by DETS was frozen. These gaps are the weeks ending March 14, 2020; March 28, 2020; April 11, 2020; April 25, 2020; May 9, 2020; May 23, 2020; and June 6, 2020. Two other gaps are marked “awaiting filing:” the weeks ending Aug. 1, 2020, and Dec. 19, 2020. No payment was made the week ending Dec. 26, 2020 due to the lapse in Congressional funding.

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—

(aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(bb) a member of the individual’s household has been diagnosed with COVID–19;

(cc) the individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID–19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19 public health emergency and such school or facility care is required for the individual to work;

(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;
 - (hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
 - (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; 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).

8 Alaska Administrative Code 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.

APPLICATION

Timeliness.

In this case, Ms. Bice's appeal period, calculated pursuant to 8 AAC 85.151(b), ended June 28, 2020. The appeal, filed November 18, 2021, was 143 days late. Ms. Bice had called within the appeal period, but no appeal was taken; she was just informed of how to cure the issue. However, it appears Ms. Bice waited another 102 days before calling again and reportedly told the DETS staff she would get a letter. No appeal was taken. Finally, when Ms. Bice called almost two months later, an appeal was taken by the DETS staff.

It appears that when Ms. Bice called in June 2020, while still within the appeal period, she made an "oral . . . protest" but, instead of taking an appeal, the DETS employee informed her how to correct the deficiency. When she called again three months later, she was again guided toward correcting the deficiency rather than filing an appeal. It was not until she called 143 days after her appeal period had lapsed that an appeal was taken.

I find this presents a close question on timeliness. While agency failure to record an appeal is generally outside the control of the claimant³, the claimant's appeal period can only be extended a "reasonable time." *In re Shangin*, P20 243 03, Feb. 22, 2021 (finding 70 days an unreasonable time). Clearly, Ms. Bice's call on June 11, 2021 was a timely protest and, had an appeal been taken then, it would have been timely. However, she waited three months before calling again; and almost two months before calling after that. Ms. Bice was not pursuing her right to appeal, or even the attempt to remedy the deficiency, in a prompt manner, but she was not assisted in doing so by being guided to remedy the deficiency while allowing the appeal right to lapse. Because the initial guidance contributed to Ms. Bice's delay, I find that there was an attempt to appeal within the time to appeal, but it is unreasonable, in view of Ms. Bice's subsequent inaction, to extend the period the 143 days to when the appeal was recorded. Therefore, the appeal must be dismissed.

Merits.

Even if the appeal were recorded on time, I would sustain the determination that Ms. Bice was not eligible for PUA benefits from the week ending January 2, 2021. Ms. Bice

³ *In re Thomas*, P20 311 03, March 1, 2021; *In re Harris*, P21 284 03, June 1, 2021.


failed to provide any written confirmation of the job offer from Nancy Reese, although she has known of the need to provide it for months. She testified that Nancy Reese told her that she would hire her for private clients if she didn't hire her at Baxter Senior Living Center. However, despite claiming that she knows where Ms. Reese lives, she has not provided this office, or the DETS, with a written statement (or other documentation) confirming the offer to hire by Ms. Reese. This is not to suggest that Ms. Bice was untruthful in her report of the interview; she provided frank and credible detail in her testimony concerning the interview at the Baxter Senior Living Center. Nonetheless, without testimony from Ms. Reese or any documentation, I cannot find that she provided the requisite documentation under Section 2102(a)(3)(A)(iii).

I note that there is no overpayment balance on Ms. Bice's payment record (Ex. 1, pg. 22) and the denial is only from the week ending January 2, 2022, when Section 2102(a)(3)(A)(iii) took effect. The DETS properly accepted Ms. Bice's self-certification (presumably bolstered by Ms. Reese's verbal statement) to establish eligibility from the week ending March 21, 2020 through December 19, 2020. No explanation is offered by DETS for the gaps in payments in March, April, May and June marked "payment returned" (Ex. 1, pg. 25). In view of the absence of denial of eligibility for that period, the DETS is directed to either pay the gap weeks or to provide Ms. Bice with a record of the calculations showing that the check issued May 26, 2021 properly included the gaps shown on Ex. 1, pg. 25.

DECISION

The appeal is denied and **DISMISSED**. Ms. Bice's eligibility for PUA benefits from the week ending March 21, 2020 through the week ending December 19, 2020, which was not contested by DETS, is **AFFIRMED**, and the DETS is directed to provide Ms. Bice with a record of the calculations showing that the check issued May 26, 2021 properly included the gaps shown on Ex. 1, pg. 25, and, if the above check did not include the gap weeks, to issue payment for those missing weeks.

Dated: February 24, 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 February 24, 2022, the foregoing decision was served on Verda Bice (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



*Alaska Department of Labor and Workforce Development
Appeals to the Commissioner*

Please read carefully the enclosed Appeal Tribunal decision. Any interested party (claimant or the Division of Employment and Training Services [DETS]) may request that the Commissioner accept an *appeal* against the decision (AS 23.20.430-435 and 8 AAC 85.154-155).

A Commissioner appeal must be filed within 30 days after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A Commissioner appeal must be in writing and must fully explain your reason for the appeal. You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner appeals *to the Commissioner's Hearing Officer* at the address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present *written argument* to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an *oral argument*. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

**ALASKA DEPARTMENT OF LABOR
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