

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

In the Matter of)	
)	
TERRY YACOVELLI)	OAH No. 21-2572-PUA
_____)	Agency No. P21 1061 03

APPEAL DECISION

Docket Number: P21 1061 03

Hearing Date: January 24, 2022

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Terry Yacovelli

None

CASE HISTORY

This is the claimant’s second case before the Office of Administrative Hearings (OAH) regarding his claims for Pandemic Unemployment Assistance (PUA) benefits. The first case decided Mr. Yacovelli’s employment with Anchorage People Ready made him a “covered individual” eligible for PUA benefit from the week ending March 28, 2020 through the week ending December 26, 2020, excluding a brief period he was not eligible due to illness.

The Division recalculated Mr. Yavovelli’s benefits following Judge Tostevin’s decision. The Division deposited \$1,466.00 to his bank card on June 24, 2020 and \$1,791.90 to his checking account in October 2021. Due to issues with changes to Mr. Yacovelli’s bank account numbers and debit card, his remaining benefits were paid in a lump sum on November 19, 2021.¹ To be clear, these payments were for the weeks ending March 28, 2020 through the week ending December 26, 2020. These benefits did not cover claims filed in 2021.

Mr. Yacovelli continued to apply for PUA benefits in 2021. On September 15, 2021 the Division issued a determination denying Mr. Yacovelli’s PUA claims effective the week ending January 2, 2021 and on-going. His appeal was not filed within 30 days of the decision date; it was filed November 19, 2021. The Department of Labor referred the appeal to the Office of Administrative Hearings. 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 January 24, 2022

¹ Ex. 1, p.20.

The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of Mr. Yacovelli's appeal disqualified him from challenging the denial, and if not, whether he meets the eligibility requirements of the Act in 2021.

TIMELINESS OF THE APPEAL

Under AS 23.20.340 and 8 AAC 85.151 the appeal of an agency determination or re-determination must be filed within 30 days after the determination or redetermination is made. 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. In addition, due process requires claimants "be provided a meaningful opportunity to understand, review, and where appropriate, challenge the department's actions."²

Mr. Yacovelli testified he was in communication with the Division between the date of the determination, September 15, 2021, and the date they noted his appeal, November 19, 2021. He thought he did appeal within 30 days. Review of Exhibit 1 demonstrates that there was communication between Mr. Yacovelli and the Division on October 7, 2021 as well as November 19, 2021. On this record, the Tribunal will treat his appeal as timely.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act.

FINDINGS OF FACT

Terry Yacovelli established a claim for Pandemic Unemployment Assistance benefits effective the week ending January 2, 2021. The Division initially concluded he had not properly filed test claims to determine if he had a disqualifying regular Unemployment Insurance (UI) claim. On September 15, 2021 the Division issued a determination that the claimant was not eligible for PUA benefits because he had not timely responded to requests for additional information on that issue.³ However, on October 7, 2021 the Division "took Paper" and updated his claim on that basis.

Therefore, the issue presented is whether Mr. Yacovelli was impacted by COVID-19 in a manner that made him a covered individual under the program from the week ending January 2, 2021 when his claim was effective to the week ending September 18, 2021, the week the Division issued the determination.

Detailed facts regarding Mr. Yacovelli's work history prior to the pandemic is set out in the prior decision, *In the Matter of Jeremiah Yacovelli*, OAH 21-1467-PUA.⁴

² *Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1007 (Alaska 2008); see also *Allen v. State, Dept. of Health & Social Services*, 203 P.3d 1155, 1168-70 (Alaska 2009)(discussing recoupment).

³ Ex. 1., p. 3.

⁴ Added to the record as Ex. A.

Essentially, Mr. Yacovelli began work with People Ready, a third-party labor services provider in Anchorage, in 2019. When the pandemic occurred in 2020, he was effectively laid off by People Ready. That is, he remained on their eligible for hire roll, but there was no work available, so Mr. Yacovelli received no callouts. A representative from People Ready told the Division that work was not available for Mr. Yacovelli from March 2020 to December 2020.⁵

As a result of the lack of work, Mr. Yacovelli could not pay his rent in Anchorage. He moved to Palmer, approximately 45 miles from Anchorage. People Ready has another office in the Matanuska Susitna Valley. That office is much smaller and receives fewer and less diverse job requests than Anchorage.

On December 23, 2020 Mr. Yacovelli spoke with a Division representative. According to the notes, the following conversation took place.

Q: Are you employed by People Ready or are you an independent contractor that works on call?

A: I was employed and then they told me there was no work.

Q: So, you were actually receiving paychecks from People Ready?

A: Yes, I actually worked for People Ready, and they paid me direct to my card.

Q: What kind of work do you do?

A: General laborer. I just can't lift things over 60 lbs.

Q: Have you returned to working?

A: No.

Q: Why have you not returned to working.

A: My understanding is that if I find work, I wouldn't get paid any money that was pending. I've been looking for work, but I didn't know if I should take any jobs. I need PUA money because I have no income.

Q: Did People Ready really lay you off?

⁵ Ex. 1, p. 19. There is little to no dispute that People Ready was significantly impacted by the COVID-19 pandemic from March 2020 through December 2020 in both towns. Tammy Vansandt, manager at People Ready, told the Division in December 2020 that Mr. Yacovelli remained on their active call list, but requests had been "very slow", and no jobs had come in for him.

A: Yes, they said there is no work available.

Mr. Yacovelli was asked at the January 24, 2022 hearing whether he accepted any jobs with People Ready in 2021. He did not.

He was also asked if he had looked for employment in the Valley other than with People Ready since January 2021. Mr. Yacovelli testified that he had not. He testified he did not look for other work in the Valley because he did not have transportation and he did not see any suitable jobs given what he considered to be limitations on his physical capacities.

Mr. Yacovelli testified that no suitable People Ready jobs were posted from January 2021 to September 2021. However, for Mr. Yacovelli the concept of “suitable” was very restrictive: he did not have a car, so he was unable or unwilling to drive to Anchorage or most places in the Valley. He acknowledged that jobs suitable for his physical capabilities were posted for Anchorage, but he did not accept them because he lacked transportation.

Mr. Yacovelli testified he was also unable to accept labor work where he would need to lift more than 50 lbs. or put strain on his knees or shoulders. In the larger community of Anchorage, such jobs were often available, but there were few such jobs in the Valley. He did not accept jobs in Anchorage that were within his physical capabilities because he did not have transportation. He could not recall if People Ready had any jobs within his physical abilities in the Valley, but he would not have accepted them because he did not have transportation.

Mr. Yacovelli testified he did not respond to a single posting from People Ready in 2021. Nor did he apply for other jobs in his local area. Instead, Mr. Yacovelli testified he has investigated and dedicated time to the development of a business opportunity with his brother involving a natural resources development project in Valdez. He has obtained state and federal permits, found a transport agency, produces a marketing video, and conducted significant scientific and marketing research.

Mr. Yacovelli testified he thought he should receive PUA benefits for the period January 2021 through September 2021 because he “had been forced to move by the pandemic” and his resulting difficulties with transportation were mere offshoots of that move.

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

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law.⁶ The CARES Act creates three new unemployment insurance assistance (UI) programs: Pandemic Unemployment Compensation (PUC), Pandemic

⁶ CARES Act, S. 3548, 116th Cong. (2002).

Emergency Unemployment Compensation, (PEUC) and Pandemic Unemployment Assistance (PUA). PUA provides emergency unemployment assistance to workers who are left out of regular state UI or who have exhausted their state UI benefits(including any Extended Benefits that might become available in the future).⁷

To be eligible, PUA applicants must establish that they are a “covered individual” as defined by the Act. Sec. 2102(3) defines “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;

⁷ *Id.*

(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

(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

Mr. Yacovelli is not is a covered individual under the criteria set forth in § 2102(a)(3)(A)(1)(I)(aa)-(II) of the CARES Act: he was not able to demonstrate he remained “laid off” by his employer because the evidence demonstrated Mr. Yacovelli relocated severing his employment ties and thereafter did not apply for or accept work

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is not eligible for unemployment benefits under any State or Federal program and who is unemployed due to one of the listed reasons related to the COVID-19 pandemic. Mr. Yacovelli’s self-employment did not qualify him to claim regular unemployment benefits.⁸

⁸ Ex. 1, p. 8.

Mr. Yacovelli credibly testified that People Ready in Anchorage did not have work for him in 2020. He testified that because of lack of work, Mr. Yacovelli moved from Anchorage to Palmer to find more affordable lodging. He originally lived with a friend and paid rent with housing vouchers. It appears during this time, Mr. Yacovelli hoped to return to Anchorage. Judge Tostevin seems to have concluded this period was not a relocation that severed his employment with Anchorage People Ready.

Ultimately, however, by December 2020, Mr. Yacovelli moved in with his girlfriend in a permanent living arrangement. By both intent and duration (10 months) that move qualifies as a relocation. At the time Mr. Yacovelli relocated, it could no longer be said that Anchorage People Ready had laid him off from work. This Tribunal has repeatedly held that when a person relocates, they sever the current employment connection, and continued unemployment is no longer directly related to the COVID-19 pandemic as required to trigger PUA benefits. A new, separate basis of eligibility must be established.

The fact that People Ready in Palmer had fewer jobs than People Ready in Anchorage does not mean Mr. Yacovelli remained laid off from employment after his relocation. For example, a person who worked in the Anchorage Jalapeno's Mexican Restaurant would not be "laid off" by the restaurant after they moved to the Valley just because the Wasilla Jalapeno's was fully staffed or did not need that employee's skills.

In addition, to remain eligible for PUA benefits, a person must be able to self-certify that they remained "able and available" for work as defined by law.⁹ Mr. Yacovelli testified that after his relocation, he did not look for or apply for work due to his transportation and physical limitations. Except in circumstances not presented here, a person may not stop looking for work and retain PUA eligibility.

Given the evidence presented, Mr. Yacovelli is not eligible to receive additional PUA benefits effective the week ending January 2, 2021.

Mr. Yacovelli testified he used the PUA benefits already received in the manner they were intended—to pay his immediate bills and prepare for his future self-employment. Undoubtedly, Mr. Yacovelli could use additional PUA benefits. However, PUA is not a needs-based benefit program. PUA benefits are intended to ameliorate harm caused by the pandemic not provide general public assistance.

⁹ 8 AAC 08.0

DECISION

The September 15, 2021 determination by the Division is **Affirmed**.

Dated: January 28, 2022,


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Carmen E. Clark
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 28, 2022, the foregoing decision was served on Terry Yacovelli (by mail/email to ). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings

¹⁰ Signed electronically in response to pandemic work requirements.



*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
AND WORKFORCE DEVELOPMENT
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