

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

In the Matter of )  
 )  
JOHANN REIMAN ) OAH No. 21-0893-PUA  
 ) Agency No. P21 233 03

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**APPEAL DECISION**

**Docket Number:** P21 233 03

**Hearing Date:** June 3, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Johann Reiman

None

**CASE HISTORY**

The claimant, Johann Reiman, appealed what was ostensibly a June 10, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in April 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 June 3, 2021. Mr. Reiman 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 issues before the ALJ are whether the claimant's appeal was timely and, if so, whether he meets the eligibility requirements of the Act.

**TIMELINESS**

Mr. Reiman'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 one phone call from Mr. Reiman contesting relating to the status of his claim occurred on January 25, 2021, more than thirty days after what DETS regarded as the redetermination decision.

However, the record shows at least one earlier call, on July 28, 2020. On that occasion, Mr. Reiman was interviewed about his prospective job with MatSu Family Restaurant and was told—according to his recollection and as corroborated by circumstantial evidence—that the Division would investigate further. And the Division

did, in fact, reopen its inquiry into the claim, making an investigative call to MatSu Family Restaurant later the same day.

A reasonable person would have concluded that the June decision was withdrawn and the matter was being taken back under advisement, with a new decision to be issued (perhaps with the same result, perhaps not). However, no new decision was issued. In late August, DETS called the claimant and left a message regarding taking an appeal, which implies that a new adverse decision had been *made*, but the record shows no written notice of that new decision. Thus, it is impossible to say that the 30-day timeline for appeal on the new decision ever started to run. On this record, the appeal should be treated as timely.

### **FINDINGS OF FACT**

Mr. Reiman established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 18, 2020. The Division seems to have determined that he was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program.

Mr. Reiman lives in Big Lake. In past years, he has worked as a cook in the non-tourist economy. He worked for MatSu Family Restaurant for about five years, ending about 2012, and worked for a few years on the North Slope in approximately 2015-17. He had not worked recently when the 2020 pandemic arrived. He does not have any side businesses.

In the spring of 2020, Mr. Reiman had a conversation with the owner of MatSu Family Restaurant, Mark Egbert, and was invited to come in to “discuss about getting hired.” There was no firm offer and no start date. The restaurant then closed due to COVID-19. Mr. Reiman did not have further contact with them. The restaurant has reopened, but he has not inquired about employment since the reopening.

DETS called MatSu Family Restaurant in July of 2020 and was told that no job had been offered to Mr. Reiman. The conversation was with Connie King, who Mr. Reiman reports is a waitress, not the owner. However, Mr. Reiman’s own recollection of his preliminary discussion with Mr. Egbert is basically consistent with what Mr. King said. Mr. Reiman does not have contact information for Mr. Egbert.

Mr. Reiman has not been able to find a job with other employers. He reports that COVID-19 has made hiring less active in his area.

## EXCERPTS OF RELEVANT PROVISIONS OF LAW

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

(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—

\* \* \*

(gg) the individual was *scheduled to commence* [italics added] 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; . . .

### APPLICATION

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 because one of a list of reasons related to the COVID-19 pandemic. Mr. Reiman had no recent employment and was not eligible for unemployment compensation.

Ms. Reiman did not have a job offer, so he was not “scheduled to commence” work and does not qualify under subsection (gg), quoted above.

Mr. Reiman had no recent history of attachment to the labor market before the COVID-19 pandemic began. Mr. Reiman’s unemployment after the pandemic began cannot fairly be said to be a result of the pandemic. To be sure, the pandemic added another hurdle in his path, but there were already sufficient hurdles that he was not in the workforce to begin with. In these circumstances, rightly or wrongly, the CARES Act does not provide benefits.

## DECISION

The determination that Mr. Reiman was not eligible for Pandemic Unemployment Assistance is **AFFIRMED**.

Dated: June 3, 2021





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 June 3, 2021 the foregoing decision was served on Johann Reiman (by mail by email to ). A copy was emailed to the UI Appeals Office and the UI Support Team.

  
Office of Administrative Hearings