

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

In the Matter of)
)
BRYANT KEITH BROWN) OAH No. 21-1134-PUA
) Agency No. P21 269
_____)

APPEAL DECISION

Docket Number: P21 269

Hearing Date: June 22, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Bryant Keith Brown

None

CASE HISTORY

The claimant, Bryant Keith Brown, timely appealed a January 21, 2021 determination¹ which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136, effective the week ending February 8, 2020. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in June 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 recorded hearing took place on June 22, 2021. The Division of Employment and Training Services (DETS) provided written materials but was not a live participant. Mr. Brown testified under oath and submitted written documents.

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

FINDINGS OF FACT

Mr. Brown established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 8, 2020. His application was initially approved and benefits were issued starting the week ending March 7, 2020. On January 21, 2021, the claim was redetermined and denied in total. Mr. Brown has been asked to repay the benefits previously issued.

Mr. Brown started a new job with Denali Universal Services in mid-February 2020. The company supports North Slope oilfield operations. Mr. Brown worked as a bull cook. His first assignment entailed 30 days on the North Slope. On March 4, 2020,

¹ The written notice is dated January 22, 2021.

about half-way through the assignment, he experienced gastrointestinal problems. He asked to be sent back to Anchorage to seek medical care.

Mr. Brown left the Slope the next day for medical reasons. He was placed on medical leave. His employer told him he could return if he obtained a doctor's note clearing him for work.

The timing of subsequent events is unclear. Mr. Brown first stated that he saw Dr. Austin T. Nelson, M.D. immediately upon his return in March. He later said he did not see the doctor, but the doctor ordered tests that were done immediately upon his return. He obtained a note clearing him to go back to work. He did not contact the employer's human resources office. He is not sure of dates, but he called the flight scheduling office at Denali Universal Services after getting his doctor's letter. The schedulers told him they were not sending workers back to the Slope because of COVID-19 issues. They advised him to seek unemployment benefits.

More likely than not, Mr. Brown's recollection is unreliable regarding the timing of events. In a May 2021 letter, Dr. Austin T. Nelson states that he first saw the claimant for gastrointestinal issues on May 11, 2020. This information, along with the employer's records and Mr. Brown's vagueness regarding dates, suggest he likely did not follow up with Denali Universal Services shortly after returning to Anchorage in early March.

When he applied for PUA benefits, Mr. Brown claimed he lost his job because of a lack of work starting March 20, 2020. DETS informed the employer, which responded that Mr. Brown left work for medical reasons and did not stay in contact after March 5, 2020. It disagreed he lost his job because of a lack of work, stating:

He left mid shift due to medical. He left a voicemail saying he needed to go home right away on 3/4 and his doctor told him he needed to get blood tests done. We sent him home the next day. He called our scheduler, possible cancer/colonoscopy. We had to fly him out and he would give us his doctors note. We flew him out on the 5th and we lost all communication with him. Nothing to do with COVID.

Mr. Brown never received a layoff notice from Denali Universal Services, likely because he was not considered an active employee after March 5th. He submitted documents from a variety of oilfield companies, showing that those companies were laying off workers between March 30 and April 22.

At some point, after COVID-19 had already disrupted operations on the North Slope, Mr. Brown left a voice message at a company phone number and asked for a return call. He did not hear back. He also went to the Denali Universal Services office and dropped off his doctor's letter. He left it with a receptionist at the front desk. He does not know what happened with it. He did not keep a copy.

In January 2021, Denali Universal Services told DETS it would have brought the claimant back to work if he had presented a doctor's note. As of January 21, 2021, he had not provided one.

On May 24, 2021, the claimant obtained a new letter from Dr. Nelson. It states:

Mr. Bryant Brown has been under my care since May 11, 2020 at the Alaska Digestive and Liver Disease clinic. I have followed him for a lengthy period of time for ongoing gastrointestinal issues. His underlying medical and GI related illnesses however have never precluded him from performing his duties at work and nor do I anticipate it doing so in the near future.

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—

* * *

(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; . . .

(B) does not include—

(i) an individual who has the ability to telework with pay;

Unemployment Insurance Program Letter (UIPL) 16-20, Change 5 Issued by the U.S. Department of Labor on February 25, 2021

The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: “*An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.*” [italics in original]

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 of one or more listed reasons related to the COVID-19 pandemic. The claimant did not have sufficient recent wages in covered employment to qualify for a claim to regular or extended unemployment compensation in 2020.

Mr. Brown asserts PUA eligibility because his doctor cleared him to return to work, but he could not get a new assignment with Denali Universal Services due to the pandemic. He likens his situation to a layoff or office closure. He also asserts he could not return to work after March 24, 2020 because all air travel to the North Slope was restricted after that day.

Mr. Brown left his job on March 5, 2020 for reasons unrelated to COVID-19. He did not communicate with his employer for an extended time after that. The employer did not consider him an active employee and did not send him a layoff notice, though it did send notices to many of Mr. Brown’s former co-workers.

The claimant was not laid off by his employer. It appears the employer assumed he had quit because he did not stay in contact, though it is also possible he remained on ongoing medical leave. Either way, he was not eligible for new assignments until he cleared his medical issue with the company.

Likely in mid-May 2020, after he saw Dr. Nelson, the claimant was medically cleared to return to work. This is presumably also the timeframe in which he made some efforts to reconnect with Denali Universal Services and arrange for new work. By then, it was not possible to return to the Slope. However, it seems Mr. Brown sought to return to that work without any formal communication with his employer or its human resources office. As a result, Denali Universal Services did not consider him eligible to take new assignments. This was the direct cause of his unemployment.

Had the claimant remained in communication and submitted his doctor note to the proper office, he likely would have been unable to return to the Slope for a period of time after mid-May 2020, due to the pandemic. He likely would have been able to return to work as soon as his employer re-opened operations. The dates of those


events are uncertain because Mr. Brown did not take the needed preliminary steps to be considered an active employee and eligible for assignments.

The claimant did not show he meets the eligibility requirements of the Act. If the claimant believes he cannot repay overpaid benefits, or that a waiver of the repayment obligation should be granted, he can seek a waiver and other information by calling the Benefit Payment Control office at 907-465-2863; 1-888-810-6789; or email, jnu.bpc@alaska.gov.

DECISION

The determination issued on January 21, 2020 is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program as of the week ending February 8, 2020 or thereafter.


Dated: June 28, 2021



For: Kathryn Swiderski
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 28, 2021 the foregoing decision was served on Bryant Keith Brown (by mail and by email to: ). A copy has been emailed to the UI Support Team, UI Technical Team, and the UI Appeals Office.


Office of Administrative Hearings