

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

In the Matter of )  
 )  
CRAIG JOHNSEN ) OAH No. 21-0905-PUA  
 ) Agency No. P21 291 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 291 03

**Hearing Date:** May 26, 2021

**CLAIMANT APPEARANCES:**

Craig Johnsen

**DETS APPEARANCES:**

None

**CASE HISTORY**

The claimant, Craig Johnsen, appealed an October 27, 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 May 2021. Under the 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 May 26, 2021. Mr. Johnsen testified under oath and submitted written materials. The Division of Employment and Training Services (DETS) provided written materials but was not a live participant. The record closed on June 14, 2020.

The matter was referred to the ALJ to consider two issues, in sequence: (1) whether the lateness of Mr. Johnsen's appeal disqualified him from challenging the determination, and if not, (2) whether Mr. Johnsen met the eligibility requirements of the Act beginning the week ending March 21, 2020.

**FINDINGS OF FACT**

Mr. Johnsen established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 21, 2020. DETS initially determined that he was eligible and issued benefits for that week through the week ending June 27, 2020. On October 27, 2020, it determined that he was not impacted by COVID-19 in a manner that made him a covered individual beginning with the first week of his claim.

The denial determination was available online on October 27, 2020; a written notice issued on October 28, 2020. Mr. Johnsen saw the denial determination online shortly after it was made. He made numerous attempts to call the Division within the 30-day

appeal period. He was not able to get through. He stopped trying until he received a notice in January 2021 informing him for the first time that he must repay previously issued PUA benefits. He spoke with a Division representative on January 26, 2021 and appealed the denial and the repayment obligation at that time.

The claimant owns and operates a sole proprietorship called Black Buddha Designs. He is a glass blower and sculptor who primarily makes glass pipes and related products. He has operated his business in Alaska since August 2, 2018.

Since 2018, the claimant has had an exclusive contractual arrangement with Matthew Eaton, the owner of a smoke shop called The Shak. The claimant buys raw glass from Mr. Eaton at a favorable rate and then sells all his finished product back to Mr. Eaton. The claimant's 2019 gross receipts from glass product sales totaled \$50,274. His net profit was \$12,878. In 2019, the claimant's monthly income ranged from a low of approximately \$2,600 to a high of approximately \$5,900.

The claimant's 2020 gross receipts and net profit are not in the record. Mr. Johnsen did not have that information during the hearing. He agreed to submit monthly income information after the hearing. He submitted documentation showing gross receipts of \$1800 in January 2020 and \$3800 in February 2020, prior to the pandemic, and \$3200 in December 2020, which he attributed to holiday season sales.

The claimant testified that his business income dropped off substantially from March 2020 through November 2020, but he did not quantify his receipts for those months. He declined to submit bank statements or other evidence showing his income, though he provided that information for the months before and after that period. He asserted that Mr. Eaton stopped buying his products for a while in 2020, and he began making purchases again sometime in the fall of 2020.

Mr. Johnsen attributed his reduced income in 2020 to the COVID-19 pandemic. He asserted that The Shak was closed by government COVID-19 mandates for some time in 2020, which reduced Mr. Eaton's need for glass pipes. The claimant did not know the date of closure or re-opening.

In 2021, the claimant's gross business receipts were: \$1000 in January; \$2900 in February; and \$2520 in March.

### **PROVISIONS OF LAW - TIMELINESS**

#### **AS 23.20.340 provides in part:**

- (e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The period for filing an

appeal may be extended for a reasonable period if the claimant shows that the application was delayed as a result of circumstances beyond the claimant's control.

**8 AAC 85.151 provides in part:**

- (b) An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant'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 claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

**CONCLUSION - TIMELINESS**

To extend the 30-day appeal period, the claimant must show that his failure to timely appeal was due to circumstances beyond his control. He made this showing since he was unable to speak with an agency representative despite numerous attempts. It is reasonable to extend the appeal period through January 2021, because that appears to be the month in which DETS first informed Mr. Johnsen he would have to repay previously issued benefits.

**DECISION - TIMELINESS**

The claimant's appeal from the determination made on October 27, 2020 is **ACCEPTED** as timely filed.

**EXCERPTS OF PROVISIONS OF LAW – PUA ELIGIBILITY**

**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—

(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

(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).

**Unemployment Insurance Program Letter (UIPL) 16-20, Change 2 Issued by U.S. Department of Labor on July 21, 2020:**

Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16-20, Change 1, explains that an independent contractor who experiences a “significant diminution of work as a result of COVID-19” may be eligible for PUA. With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

**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’s work history does not qualify him to a claim for regular or extended unemployment benefits.

Guidance from the U.S. Department of Labor in UIPL 16-20 Change 2, above, holds that a self-employed individual who experiences a significant reduction in work as a direct result of the pandemic may be considered a covered individual. Mr. Johnsen might have met this criterion for the week ending March 21, 2020 through the week ending December 5, 2020, if he showed a significant reduction in business income during that time. Such a reduction likely would be as a direct result of the COVID-19 pandemic. However, the claimant summarized his actual income from those months only vaguely. He agreed to submit documentation after the hearing to clarify his monthly earnings, which would allow comparison to his income from the prior year.

The Office of Administrative Hearings sent him several emails explaining the needed information. Mr. Johnsen failed to follow through.

The claimant's December 2020 receipts do not show a significant diminution of business in that month. COVID-related impacts to his business after December 2020 have not been evaluated, as those should be initially reviewed by DETS since they are well after the date of the denial determination at issue here.


Based on State of Alaska COVID-19 Health Mandates issued March 27, 2020 and April 22, 2020, it is likely that The Shak was closed by government mandate from March 28, 2020 (starting at 5:00 p.m.) to May 7, 2020. Since that business sold much of the claimant's products, this likely resulted in a significant diminution of business during the affected weeks. Social distancing requirements applied after re-opening, but there is insufficient evidence showing that they significantly impacted sales of the claimant's glass products.

The claimant meets the definition of a covered individual while a primary source of his sales was closed by mandate, the week ending April 4, 2020 through the week ending May 9, 2020.

### **DECISION**

The October 27, 2020 determination in Letter ID L0005774459 is **MODIFIED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance program for the week ending April 4, 2020 through the week ending May 9, 2020. He is not eligible for the week ending March 21 or March 28, 2020, or the week ending May 16, 2020 through the end of the year. Impacts to his business in 2021 were not evaluated.

Dated: June 18, 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 18, 2021 the foregoing decision was served on Craig Johnsen (by mail and by email to [REDACTED]). A courtesy copy has been emailed to the DETS UI Technical Team, UI Appeals Team, & UI Support Team.

[REDACTED] \_\_\_\_\_  
Office of Administrative Hearings