

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

In the Matter of)
)
HALEY COLLEEN JONES) OAH No. 21-1032-PUA
) Agency No. P21-297-03
_____)

APPEAL DECISION

Docket Number: P21-297-03

Hearing Date: June 16, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Haley Colleen Jones

None

CASE HISTORY

The claimant, Haley Colleen Jones appealed a December 23, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor referred the appeal to the Office of Administrative Hearings on or about June 1, 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 16, 2021. Ms. Jones 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 record was kept open through June 18, 2021 for the claimant to search for and submit additional documents in support of her claim; however, no additional materials were received from her.

The issues before the ALJ are whether the claimant's appeal should be deemed timely filed, and if so, whether she meets the eligibility requirements of the Act.

FINDINGS OF FACT

Haley Colleen Jones established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 4, 2020. The Division determined that the claimant was not eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program.

In 2019 the claimant did not work a regular job, primarily because she became pregnant early in the year. She had her baby in early September 2019, then began working at her boyfriend's place of employment, a seafood processing facility in

Ninilchik. She testified that the seafood company did not actually hire her, because there was not enough work; but she still helped out and was paid for her work “through [her] boyfriend’s payroll.” She did that in fall 2019 until just before Christmas. After that she ended up being incarcerated for about a month (roughly from March to April 2020) on an alcohol-related charge. When she got out, she moved to Anchorage but had no work through the end of summer 2020. She then began learning the electrician trade through an electrical contractor in Anchorage, doing “on the job training” with them from September 2020 through April 2021; she believes she was on their payroll but is not certain of that. She considered herself to essentially be an apprentice, and was sometimes paid under the table by the company’s owner “when he felt like it.” She was also renting a room from the company owner, on the business premises. This apprenticeship ended in April 2021 due to “drama” between the claimant and the company owners. Since then she has not worked.

The claimant applied for PUA benefits, and DETS issued a denial letter to her dated December 23, 2020. The letter states this rationale for the denial:

It has been determined that you have not been impacted by COVID-19 reasons as of the week ending April 4, 2020 and are therefore not a covered individual. You do not meet the eligibility requirements to qualify for benefits under the [PUA] program. (Exhibit 1, p. 2.)

The claimant appealed this determination via telephone call with DETS on or about January 29, 2021. Because this was more than 30 days after the date of the denial letter, DETS flagged the claimant’s appeal as potentially untimely.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

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.

PROVISIONS OF LAW - 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).

APPLICATION

A. Timeliness

The claimant's appeal was processed on January 29, 2021, one week after the 30-day deadline for appealing PUA determinations. The claimant explained this delay by testifying that she had difficulties getting her mail from her former roommates, so she didn't see the 30-day deadline until it was too late to timely file the appeal.

The tribunal finds that the claimant's late filing of her appeal was caused by circumstances outside of the claimant's control the inability to retrieve her mail due to problems with former roommates. The claimant's appeal, therefore, will be treated as timely filed, and her appeal will be addressed on the merits.

B. Merits

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance (PUA) 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 reasons related to the COVID-19 pandemic. It is undisputed that the claimant’s work history did not qualify her for a claim for regular or other unemployment benefits.


The basis for DETS’s determination denying the claimant’s PUA eligibility is unclear. The December 23, 2020 denial letter merely states, without explanation, that she had “not been impacted by COVID-19 reasons ... and are therefore not a covered individual.” However, a review of the facts described by the claimant in her testimony makes the basis for denial abundantly clear. There was no causal connection between the COVID-19 pandemic and the claimant’s loss of any employment.

When the claimant submitted her appeal to DETS’s denial of her eligibility, she stated: “I disagree because I was affected. I wasn’t able to get anywhere to interview for jobs.” (Exhibit 1, p. 1.) Unfortunately, to be eligible for PUA benefits a person must be able to show that the pandemic caused them to lose either a job or a contracted-for or agreed-upon job opportunity. The eligibility categories from the CARES Act described above all describe scenarios where a person lost a job, had to quit a job, or was unable to get to their place of work, and variations on those themes, due to the COVID-19 pandemic. It is undisputed that the claimant in this case did not have work or an offer of work that was disrupted, withdrawn or terminated as a result of the COVID-19 pandemic. Being hindered in one’s ability to get to possible job interviews is not the same as actually losing a job or job offer due to the pandemic. Therefore, the claimant was correctly determined to be ineligible for PUA benefits.

DECISION

The determination issued by DETS on December 23, 2020 is **AFFIRMED**.

Dated: July 14, 2021,


Andrew M. Lebo
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 July 15, 2021, the foregoing decision was served on Haley Colleen Jones (by email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings