

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

In the Matter of)
)
KENNETH WALKER) OAH No. 21-1094-PUA
) Agency No. P21 314 03
_____)

APPEAL DECISION

Docket Number: P21 314 03

Hearing Date: June 22, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Kenneth Walker

None

CASE HISTORY

The claimant, Kenneth Walker, appealed a November 11, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The determination found that he did not meet the eligibility requirements of the Act.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in June 2021. Under the terms of referral, the administrative law judge (ALJ) hears and decides the appeal according to 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. Walker testified under oath and submitted a letter from Blair E. Wondzell of Wondzell Investment Company.

DETS asserted that Mr. Walker's appeal was untimely. The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of the appeal disqualified Mr. Walker from challenging the determination, and if not, whether he meets the eligibility requirements of the Act.

FINDINGS OF FACT

The claimant established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 7, 2020. The claimant was not eligible for regular unemployment because he did not have recent wages in covered employment on which to base a claim. On November 2, 2020, the Division determined that he was not impacted by COVID-19 in a manner that made him a covered individual as defined by the Act.

Prior to the COVID-19 pandemic, the claimant not been regularly attached to the labor market. He did not have any income in 2019. His work history involves intermittent jobs doing general labor and yard maintenance projects.

In late 2019 or early 2020, Mr. Walker talked with Blair Wondzell about working on some property owned by Mr. Wondzell's business, Wondzell Investment Company. Mr. Wondzell was the claimant's legal guardian when the claimant was a minor. Mr. Wondzell has hired the claimant in the past for general labor and maintenance projects. He paid him \$10-15 per hour, often with a \$100 minimum amount for a full workday.

Mr. Wondzell and the claimant agreed that the claimant would work on an apartment renovation project starting in March 2020. The same pay scale used in prior jobs was to apply. In February 2020, Mr. Wondzell's wife or child called the claimant to say the project would not go forward because Mr. Wondzell was ill with COVID-19. Mr. Wondzell is elderly, and the work required that the claimant interact closely with him. The Wondzell family advised that it was avoiding close contacts and taking COVID-19 precautions very seriously.

The claimant did not follow up with Mr. Wondzell to ask about the work later in the year. Because of their relationship, Mr. Walker felt he'd get a call from Mr. Wondzell if the work was going forward.

On May 4, 2021, Mr. Wondzell wrote a letter confirming the job offer and retraction because of COVID-19. He wrote:

This letter is to confirm Kenneth's employment with Wondzell Investment Co.

Kenneth is hired from time to time to help out with various projects and around March 2020 he was to start on a remodeling [sic] project that was to last until about May 2020. Due to the covid pandemic and the precautions that the municipality was [taking] and also myself getting sick his employment was discontinued.

After the denial determination was issued on November 11, 2020, the claimant contacted DETS within days to contest it. He does not know why his appeal request either was not logged or was later deleted. He called to discuss his case status on February 1, 2021 and was told there was no appeal request noted. He appealed again, so the agency's records show a February 1, 2021 appeal date.

EXCERPTS OF RELEVANT PROVISIONS

Alaska Regulation 8 AAC 85.151

Filing of appeals

(a) An interested party may file an oral or written appeal from a determination or redetermination issued under AS 23.20 and this chapter. The appeal may be filed in person, by mail, or by telephone. An oral or written protest indicating a desire to appeal is an appeal to a referee or the commissioner.

(b) An appeal from a determination or redetermination on a claim for benefits may be filed with a referee or at any office of the division. An appeal must be filed no later than 30 days after the determination or redetermination is personally delivered to the appellant or no later than 30 days after the date the determination or redetermination is mailed to the appellant'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 appellant shows that the failure to file within this period was the result of circumstances beyond the appellant's control. [italics added]*

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 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

TIMELINESS: As the first excerpt of law above indicates, a claimant has 30 days to appeal a denial determination. More likely than not, Mr. Walker initiated a timely appeal when he called DETS shortly after the denial determination was issued. It is unclear why his request was not logged and retained, but that is a circumstance outside the claimant's control. His appeal is accepted as timely filed.

MERITS: 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 reasons related to the COVID-19 pandemic.

The claimant has not recently worked in covered employment that would qualify him for regular unemployment benefits.

The claimant showed that his work with Wondzell Investment Co. was canceled as a direct result of the COVID-19 pandemic. He was to perform general labor on an apartment renovation starting in March 2020 and likely continuing into May 2020. He would be paid using the same rate that applied in prior projects.


The withdrawn job was bona fide and came from a viable business. It satisfies the PUA eligibility provision for retracted employment. This qualifies the claimant as a covered individual effective the week ending March 7, 2020 through the week ending May 30, 2020.

Mr. Walker contends that the apartment renovation project would have been followed by other projects for Wondzell Investment Co., so his PUA eligibility should be ongoing. Mr. Wondzell's letter refers only to one project that was expected to be completed in May, however. The claimant's work history also does not suggest a likelihood of ongoing or steady work.

DECISION

The determination issued on November 2, 2020 is **REVERSED IN PART**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending March 7, 2020 through the week ending May 30, 2020. The denial for other weeks at issue is otherwise AFFIRMED.

Dated: June 24, 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 24, 2021 the foregoing decision was served on Kenneth Walker (by mail and 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