

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

In the Matter of )

KRIS KILE )  
\_\_\_\_\_ )

OAH No. 21-0921-PUA  
Agency No. P21-321-03

**APPEAL DECISION**

**Docket Number:** P21-321-03

**Hearing Date:** June 3, 2021

**Claimant Appearances:**

**DETS Appearances:**

Kris Kile

None

**CASE HISTORY**

The claimant established a claim for Pandemic Unemployment Assistance (PUA) benefits effective the week ending March 14, 2020. The Division of Employment and Training Services (DETS) determined the claimant was not a “covered individual” eligible for PUA benefits and issued a Notice of the determination to the claimant November 16, 2020 (Letter ID: L0006229396). The letter stated she had been determined not impacted by COVID-19 reasons as of the week ending March 14, 2020 because “it has been verified that you do not have a viable license to practice after having criminal charges.” The determination was appealed by telephone February 2, 2021, seventy-nine days later.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on May 3, 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.

This appeal was heard in a recorded hearing on June 3, 2021. The DETS chose not to appear and provided only written materials for the hearing. Ms. Kile testified under oath but presented no other witnesses. The record was left open until June 10, 2021, to allow Ms. Kile to submit documents in support of her claim that her appeal should be considered timely.

The issues before the ALJ are first, if the claimant filed her appeal of the DETS denial in time and second, if the claimant meets the eligibility requirements of the Act from the week ending March 14, 2020.

**FINDINGS OF FACT**

Ms. Kile testified that she was a licensed nurse practitioner and registered nurse, but that her license to practice was limited in 2019 and summarily suspended following

her arrest.<sup>1</sup> At the beginning of March 2020, she had been working at a clinic as an administrative staff supervisor, having no patient contact. She was part owner of the clinic, which operated as an S-Corporation, and received guaranteed payments from the clinic in lieu of salary. On March 13, 2020, in response to her arrest, she resigned and on March 24, 2020, she signed all interest she had in the clinic over to Steve Johnson, a physician, for \$1.00. She testified the clinic shut its doors and reopened sometime in May 2020.

Ms. Kile attributes her inability to work to the COVID-19 public health emergency. She claims the delay in dismissing the criminal charges against her<sup>2</sup> is due to the suspension of Rule 45 by the Alaska Court System in response to the COVID-19 public health emergency, and the continued existence of the charges is responsible for the continued suspension of her license, and thus her inability to work even in an administrative role.

Ms. Kile testified that she has moved twice since March 2020, because she couldn't afford to keep her residence. She is presently living in Anchorage. Ms. Kile testified she has missed a lot with the pandemic and that she can't remember exactly what she did after receiving the notice that her claim for pandemic unemployment assistance was denied in November. She recalled talking to "Veronica" about trying to get her claim "reopened" and she recalled receiving some notices that led her to think her claim was, or could be, refiled. Among these notices was a Notice of Non-Monetary Redetermination dated January 25, 2021, denying eligibility for pandemic unemployment assistance benefits from January 9, 2021.

### **EXCERPTS OF RELEVANT LAW**

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

**(a) DEFINITIONS.**—In this section:

...

(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

---

<sup>1</sup> Ms. Kile testified criminal charges were filed against her on March 9, 2020 and she was arrested March 11, 2020, but the public record shows she had been arrested by March 10, 2020 and arraigned March 11 on felony charges. She was released on bond the following day.

<sup>2</sup> The public record of *State of Alaska v. Kris R. Kile*, Case No. 3AN-20-01853CR (Alaska Superior Court) does not list a filing of a motion to dismiss charges. A number of discovery hearings have been scheduled and continued at defense request.

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;

...

(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);

### **8 Alaska Administrative Code 85.151 Filing of appeals.**

(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.

## **APPLICATION**

### **Timeliness**

Ms. Kile had until December 16, 2020 to file her appeal of the November 16, 2020 determination. She filed her appeal February 2, 2021, 79 days after the decision was communicated to her in Letter ID: L0006229396. She testified she talked to a "Veronica" about re-opening her claim. As detailed in Ex. 1, pg. 14, Veronica Mendoza did speak with Ms. Kile on November 23, 2020. However, unlike appeals with

ambiguous log notes, Ms. Mendoza made more complete notes of her conversation with Ms. Kile. (Ex. 1, pg. 16). The notes detail how Ms. Mendoza followed up on the information communicated by Ms. Kile, called Ms. Kile back, and informed Ms. Kile the determination remained the same. The note states that if Ms. Kile “remains argumentative about the determination, *she has to file an appeal which is what was advised to her.*” In short, Ms. Mendoza communicated that Ms. Kile needed to file an appeal, and that the phone call to Ms. Mendoza was not an appeal. No appeal was logged at that time, nor did Ms. Kile testify that she followed up with phone calls or letters before December 16, 2021.

Ms. Kile reportedly stated the reason she was late was that “I haven’t been given any other directions *since late in December.*” Ex. 1, pg. 1. The absence of a log note of contact with Ms. Kile is not necessarily evidence that no such contact occurred. However, if Ms. Kile sought direction from the DETS on filing an appeal in *late* December, the time for appeal had already passed after December 16, 2020. Ms. Kile presented no evidence, such as email records, nor credible testimony, that she in fact attempted to file an appeal in December 2020.

Ms. Kile states that “it took a call back to PUA before an appeal was initiated in February,” inferring that her next call back to PUA was the one logged in February. However, Ms. Kile didn’t offer proof of circumstances that prevented her from calling before February. Ms. Kile did not detail reasons outside her control, such as illness, failure to receive notice, a misleading statement by the DETS, an unsuccessful attempt to file an appeal, incarceration, or lack of access to the internet or telephone data services, for the 49-day delay between December 16, 2020 and February 2, 2021 for her failure to file an appeal. Here, there is no evidence that circumstances outside Ms. Kile’s control *prevented* Ms. Kile from filing an appeal.

Ms. Kile seems to be asserting she still had a claim “open” because she received a letter dated January 11, 2021 about filing a test claim for unemployment and a second Notice of Non-Monetary Issue Determination (Letter ID: 0009314396) dated January 25, 2020<sup>3</sup> informing her that she was not eligible under Section 2102 of the CARES Act of 2020, as of January 9, 2021, because she had failed to file a quarterly “test claim” or she was eligible for regular unemployment benefits. She asserts this proves that she was trying to appeal her claim. However, filing a quarterly “test claim” is not an attempt to file an appeal; it is to satisfy a requirement of eligibility.

Ms. Kile is not an unsophisticated person who lacks knowledge of legal processes. She understands the concepts of deadlines and appeals. I find Ms. Kile did not present

---

<sup>3</sup> If Ms. Kile was appealing this determination, of course her appeal would be timely. However, because she is appealing denial of benefits from before January 9, 2021, based on lack of a “viable license”, her appeal is not directed to the January 25, 2021 determination, which is specifically limited to the period after January 9, 2021. Also, her comment about lack of directions until late December would not apply to an appeal of a determination issued in January 2021.

credible evidence of an unsuccessful attempt to file an appeal of the November 16, 2020 determination on time. I conclude that Ms. Kile's appeal is barred by failure to file within 30 days of communication of the November 16, 2020 Notice.

### **Merits**

As noted above, Ms. Kile's appeal, if it is directed to the January 25, 2021 determination, is timely. That notice provides new appeal rights and a new period for her appeal to be filed. I note that the January 25, 2021 determination doesn't concern the same issue (failure to file a "test claim") as the November 16, 2020 determination (other factors than COVID-19 impacting inability to work after March 9, 2020) and covers a different time period (after January 9, 2021 instead of after March 9, 2020). However, I would conclude that the appeal of either determination is without merit.

Failure to file a quarterly "test claim" is failure to satisfy the first step of eligibility for pandemic unemployment assistance benefits under Section 2102(a)(3)(A)(i). However, if a person is not eligible as a covered individual under Section 2102(a)(3)(A)(ii), filing a "test claim" is a futile act. Ms. Kile has not established she would be eligible as a covered individual even after January 9, 2021.


First, Ms. Kile did not lose her job, nor did she lose her self-employment business as a *direct result* of the COVID-19 public health emergency. She admits that she resigned from her position at the clinic and gave up all her interest in the S-Corporation that operated the clinic following her arrest on criminal charges. She is therefore not eligible for pandemic unemployment assistance as a covered individual under Section 2102(a)(3)(ii)(I)(i) or (jj), even if she filed a quarterly test claim.

Second, Ms. Kile's statements may be considered a claim that her re-entry into her profession or ability to secure employment have been *delayed* by the operation of public orders issued by the Alaska Court System in response to the COVID-19 public health emergency, more specifically, the suspension of Rule 45. However, Ms. Kile failed to establish key steps in a causal connection between the Court System's orders in response to the COVID-19 public health emergency and her present lack of employment. She failed to establish with certainty that by January 9, 2021, she would have been acquitted of the charges against her *and* that the suspension of her license would be revoked or that the charges against her would have been dismissed *and* the suspension of her license would be revoked if Rule 45 had not been suspended. She also failed to account for the delays sought by her own counsel. Finally, she failed to establish that she would have had an offer of employment by January 9, 2021 that she was prevented from accepting as a direct result of the COVID-19 public health emergency. Ms. Kile's belief that all her legal problems would have been resolved in her favor, and she would have returned to practice much sooner if only the COVID-19 pandemic had not occurred, is not supported by evidence. I conclude that she has not established a claim as a covered individual under Section 2102(a)(3)(A)(ii)(I)(gg).

## DECISION

The determinations of November 16, 2020 (Letter ID: L0006229396) and January 25, 2021, (Letter ID: 0009314396) are AFFIRMED.

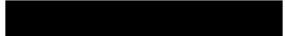
Dated: June 11, 2021.


  
Kristin Knudsen  
Administrative Law Judge

## APPEAL PROCEDURE

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 11, 2021 the foregoing decision was served on Kris Kile (by mail and by email to: ). A copy has been emailed to the UI Support Team, the UI Technical Team, and the UI Appeals Office.

  
Office of Administrative Hearings