

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

In the Matter of	)	
	)	
LEVI TANGMAN	)	OAH No. 21-1105-PUA
<hr style="width:40%; margin-left:0"/>	)	Agency No. P21-419

**APPEAL DECISION**

**Docket Number:** P21-419

**Hearing Date:** July 6, 2021

**Claimant Appearances:**

**DETS Appearances:**

Levi Tangman

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 October 7, 2020. (Letter ID: L0005192365). The determination was appealed February 9, 2021.

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 originally scheduled to be heard on June 24, 2021. When reached by telephone, Mr. Tangman indicated he had moved, so had not received the documents filed by the DETS as Exhibit 1, or the notice of the hearing. The hearing was rescheduled, and the appeal was heard in a recorded hearing on July 6, 2021. The DETS chose to not to appear and provided only written materials for the hearing. Mr. Tangman, who acknowledged receipt of the notice and documents, testified under oath but presented no other witnesses.

The issue before the ALJ is first, whether the claimant’s appeal is barred for failure to file the appeal within 30 days to the decision, and if not, whether the claimant meets the eligibility requirements of the Act from the week ending March 14, 2020.

**FINDINGS OF FACT**

Mr. Tangman operates a small business of cutting and delivering firewood, mostly beetle-killed spruce that is, unfortunately, plentiful on the Kenai Peninsula. He advertised on Craigslist and Facebook. He generally cuts wood through the summer, when clients are generally not calling for wood, and delivers it, a cord at a time, all

through the rest of the year. He earns about \$4,000 to \$4,500 a year, selling roughly 18 cords a year, based on his price of \$225 to \$250/cord.<sup>1</sup>

Mr. Tangman testified that he lost business in 2020 because the state health mandates meant that “no one could go anywhere.” He acknowledged that he was able to cut wood by himself during the summer, but that people were not having him come to their houses. He testified that he was also unable to earn money as a general handyman, which he generally does to fill in during the summer. He testified that in September of 2020, he started to get calls for wood again, and his business gradually picked up through the winter. He has been regularly employed since May 2021 working hanging gutters for a roofing company.

Mr. Tangman explained the delay in filing an appeal by his confusion over the meaning of the letter he received. He doesn’t file self-employment taxes because he earns so little and doesn’t know how. He doesn’t have a business license. He continued to get letters that said he should file.

## **EXCERPTS OF RELEVANT LAW**

### **8 Alaska Administrative Code 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.

### **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—

---

<sup>1</sup> Cutting, splitting, delivering, and stacking 18 cords of wood alone is not a small undertaking, as a cord is 128 cubic feet of wood, or a stack 4 feet wide, 4 feet high, and 8 feet long, requiring 2 full pick-up loads to deliver. 18 cords equal 2,304 cubic feet, or enough to run a stack of work three feet high and two feet deep along the side of a football field. The amount of labor involved represents a considerable investment in the business.

(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—

...

(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;

...

(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;

...

(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 No. 16-20, change 1**, issued by the Secretary of Labor on April 27, 2020, added eligibility provisions under Section 2102(a)(3)(A)(ii)(I)(kk): An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19 reasons listed above, including an independent contractor who experiences a “significant diminution of work as a result of COVID-19.

## **APPLICATION**

### **Timeliness.**

Mr. Tangman acknowledged that he lived at the letter’s address when the letter was mailed, and that he can access the online DETS account. Mr. Tangman was frank

about his reason for delay – that he was simply confused by the letter that informed him that he was not eligible for benefits.

I find that the language of this form letter is confusing. In the paragraph headed “Reason for Decision” “*you have not been impacted by COVID-19 reasons . . . you do not meet the eligibility requirements to qualify for benefits.*” (emphasis added). Then, in the paragraph immediately following, headed “Decision Details,” it states, “You are self-employed as a handyman and firewood deliverer at Tangman’s Services *and impacted by COVID-19 on 3/13/20 due to social distancing and lockdown restrictions, however you do not have a business license or 2019 tax returns documenting your self-employment.*” (emphasis added). A person could be confused by these contradictory statements regarding impact by COVID-19. A person could also be confused by what appears to be agreement by the DETS that “you are self-employed” but wonder why, if the DETS agrees you are self-employed, it matters that “you do not have a business license or . . . tax returns documenting your self-employment.”

However, it is not a reasonable response to confusion to wait four months to appeal what clearly was an adverse determination that “you do not meet the program eligibility requirements”. Mr. Tangman did not testify he was prevented by circumstances outside his control from emailing the DETS earlier than he did to show he had a business (see page 4, Ex. 1) and to appeal. I therefore conclude that his appeal is not timely and must be dismissed.

### **Merits.**

I briefly address the merits of Mr. Tangman’s claim. A state business license and prior year tax records are common means of demonstrating the existence of a professional or ordinary commercial business, such as an independent bookkeeper or owner of a food truck might have available. However, Alaskans like Mr. Tangman engaged in casual, marginally profitable, service businesses providing a commodity or labor that caters to a small local market, may not have established such records out of fear of regulatory burdens or lack of knowledge. Such businesses may demonstrate their existence by invoices, checks, bank records, proof of expenses, advertisements, testimony or statements from clients, and so on. Here, however, the question is not so much whether Mr. Tangman’s firewood business exists, as whether he really suffered a “significant diminution” in demand for his services after March 11, 2020, when the Governor issued a declaration of public health emergency.

First, Mr. Tangman submitted invoices dated March 31, 2020 and April 15, 2020 paid for cords of wood (Ex. 1, pg. 6-7), which established he was not prevented from delivering and obtaining payment by the onset of the public health emergency. He testified that the demand for wood usually slows in summer. He continued to cut wood in the summer of 2020, so access to beetle-killed timber was not prevented by the public health emergency closures or mandates. Finally, he testified that the demand for firewood “picked up” in the fall and winter of 2020. Since Mr. Tangman works

alone outside, he would not be impacted by social distancing regulations during the summer and there is no evidence social distancing regulations or closures caused a “significant diminution” in demand for his firewood. I conclude that Mr. Tangman did not provide sufficient evidence to support a finding of a “significant diminution” in his business attributable to COVID-19 reasons.<sup>2</sup> Thus even if it had been filed on time, I must have affirmed the determination of October 7, 2020, although for a different reason.

### **DECISION**

The appeal is DISMISSED as untimely.

Dated: July 12, 2021.

[REDACTED]

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 July 13, 2021 the foregoing decision was served on Levi Tangman (by mail to: [REDACTED] and by email to: [REDACTED]). A courtesy copy was emailed to the UI Support Team, UI Technical Team, and UI Appeals Office.

[REDACTED]  
Office of Administrative Hearings

---

<sup>2</sup> Mr. Tangman also claimed he was employed as a “handyman” in the summers, but he provided no proof of this employment in the past on which to base a comparison, or evidence of the impact on specific employment he lost for COVID-19 reasons. Difficulty finding employment, as opposed to losing employment, because businesses are not hiring during the public health emergency is not recognized as a qualifying COVID-19 reason. See, UIPL 16-20, Change 2, issued by the U.S. Secretary of Labor July 21, 2020; *In re Hardon*, OAH No. 21-1167-PUA (June 21, 2021).