

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

In the Matter of)
)
DYLAN WELCH) OAH No. 21-1229-PUA
) Agency No. P21 434 03

APPEAL DECISION

Docket Number: P21 434 03

Hearing Date: July 7, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Dylan Welch
Jeff Welch

None

CASE HISTORY

Dylan Welch of Kodiak appealed a January 19, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0009179314. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in June 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 July 7, 2021. Mr. Welch testified under oath, as did his father and employer/business partner, master guide Jeff Welch. 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 issue before the ALJ is whether the claimant's appeal was timely and, if so, whether he meets the eligibility requirements of the Act.

TIMELINESS

Mr. Welch's appeal was flagged as untimely. This seems to have happened because Alaska Regulation 8 AAC 85.151 provides a 30-day window for appeal, and the letter from Mr. Welch requesting an appeal arrived just over 30 calendar days after the decision had been issued. For reasons that seem likely to be attributable to the Postal Service, the letter carried no postmark. DETS considers—and tells claimants—that an appeal is "filed" when it is postmarked, but in the absence of a postmark the Division decided the appeal was filed on the date it was received rather than mailed.

This situation might present an interesting issue if it were true that the appeal letter was received outside the 30-day appeal window. But because of the way the 30 days is supposed to be calculated by law, it actually arrived on the final day of the appeal period, and the appeal is timely.

The decision under review was mailed to Mr. Welch on January 19, 2021. Regulation 8 AAC 85.151 provides that the appeal time limit is to be computed in accordance with Rule 6 of the Alaska Rules of Civil Procedure. Rule 6(c) provides that, for time limits computed from notices distributed by mail, “three calendar days shall be added to the prescribed period.” Mr. Welch’s notice was distributed by mail, and therefore the appeal deadline for him was 33 days after January 19, making it February 21, 2021. But February 21 was a Sunday. Rule 6(a) provides that if the last day of the appeal period “is a Saturday, Sunday, or legal holiday, . . . the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.” The next such day was Monday, February 22, 2021. And that is the day on which Mr. Welch’s appeal arrived at the department’s P.O. Box in Juneau.

FINDINGS OF FACT

Mr. Welch established a claim for Pandemic Unemployment Assistance benefits that was effective the week ending March 28, 2020. The Division ultimately found that he was not impacted by COVID-19 in a manner that made him a covered individual under the program. The reason for this determination seems to have been that the Division was unable to reach Mr. Welch, although this is puzzling because there does seem to have been some telephone contact between Mr. Welch and the DETS staff. The staff noted that Mr. Welch “may” have PUA eligibility during the early weeks of his claim.

Dylan Welch has a long history of wage labor for the City of Kodiak, ending in 2018. He has also had jobs over the years with his father Jeff Welch’s guide business, Welch Brothers Kodiak Expeditions. Jeff Welch is a master hunting guide, but the business offers a variety of services, including wildlife viewing and fishing as well as hunting.

Going into 2020, Jeff Welch was reaching 70 and he and Dylan agreed that Dylan would come into the business as a junior guide and helper in 2020, with the idea that he would eventually take it over. The work was to start with a spring bear hunt that had been reserved with out-of-state clients. Using the deposit for that hunt, Welch Bros. would pay the \$600 fee to get Dylan an assistant guide license. Preparation for the hunt would begin in late March, with Dylan paid a daily rate. He was to continue working with the business through the summer (with regular sportfishing clients scheduled), followed by autumn deer and bear seasons. Guiding work would end by the end of November.

Welch Brothers caters entirely to out-of-state, mostly east coast clientele. Due to COVID-19, all clients canceled and Welch Brothers had no business in 2020. Dylan

Welch was therefore not able to work for the business. He and his father attempted to make a living by crab fishing, which has not been part of their regular line of work in many years. This was not successful, in that expenses were equal to or greater than revenues.

It does not appear that Welch Brothers has been particularly proactive in getting back into business in 2021, although they are trying to book deer hunts for the fall. Since the spring of 2021 postdates the DETS decision at issue and has not been investigated by DETS, factual development for a possible 2021 PUA claim will be left to a new DETS decision.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

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

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 one of a list of reasons related to the COVID-19 pandemic. Mr. Welch was eligible for Pandemic Emergency Unemployment Benefits (PEUC) for significant parts of 2020 and 2021, an issue that will be briefly addressed below. However, the denial that is on appeal in this case is a denial based on the claimant not being unemployed due to a listed reason.

The hearing established that Dylan Welch had a firm offer to work the guiding season with Welch Brothers, with the work to begin in late March. While skepticism is sometimes in order when claimants allege that they have been offered employment by family members, this plan to integrate Dylan more fully into the family business was credibly established at the hearing. The hire could not be completed because of the loss of all of the guiding business's customers for the 2020 season. In this situation, subsection (gg), quoted above, makes the claimant eligible for PUA. The potential eligibility runs from the week ending March 28, 2020 through the last week in November, 2020.


Although it is not a basis for the denial under review, the record reveals that, based on his prior City of Kodiak employment, Dylan Welch had two long stretches of PEUC eligibility, one from late April or May until sometime in August and another starting the week ending January 2, 2021. PEUC eligibility precludes PUA eligibility. This decision will require DETS to pay PUA benefits only for weeks in which there was no PEUC eligibility.

DECISION

The appeal is timely. The determinations in Letter ID L0009179314 is **REVERSED**. *The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending March 28, 2020 and ending the week ending November 28, 2020, with the following limitation: The claimant is not eligible for PUA in weeks for which he was eligible for PEUC.*¹

This decision does not address PUA eligibility in 2021. If PUA is sought for any part of 2021, DETS may make a new eligibility decision for that year.

Dated: July 12, 2021



Christopher Kennedy
Administrative Law Judge

¹ The claimant was eligible for PEUC at least from the week ending May 9, 2020 through the week ending August 22, 2020.

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 12, 2021 the foregoing decision was served on Dylan Welch (by mail and by email to [REDACTED]). A copy was emailed to the UI Support Team, UI Technical Team, and UI Appeals Office.

[REDACTED]—
Office of Administrative Hearings