

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

In the Matter of )  
 )  
ALEXX PARKER ) OAH No. 21-1213-PUA  
 ) Agency No. P21 442 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 442 03

**Hearing Date:** July 14, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Alexx Parker

None

**CASE HISTORY**

Alexx Parker appealed a November 30, 2020 determination (Letter ID L0006513183) denying him Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. 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 14, 2021. 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. Mr. Parker testified under oath.

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.

**FINDINGS OF FACT**

Mr. Parker established a PUA effective the week ending March 14, 2020. DETS denied all PUA benefits on the ground that "you were let go for reasons unrelated to COVID-19."

At the time COVID-19 arrived in Alaska, Mr. Parker was working at the Long Branch Saloon. The Saloon shut down entirely for a time, but Mr. Parker (alone among the employees) was kept on, doing renovation and cleaning. After about a month of closure, in mid-April, Long Branch Saloon reopened for takeout orders. Mr. Parker's role at that point was cooking and delivery of food to customers who came to pick up

takeout orders. Almost immediately thereafter, on approximately April 18, Mr. Parker left the Long Branch job. It is undisputed that he had a falling out with the owner.

There are three possible reasons for Mr. Parker's departure. DETS concluded that Mr. Parker was "let go." But the evidence for this is very thin—it consists only of a statement by the owner that "I think I let him go," which is oddly equivocal. The more convincing evidence is that Mr. Parker quit—or the job ended by mutual agreement—after Mr. Parker and the owner argued heatedly about a variety of things, including disputes about underpayment for hours worked and about Mr. Parker's discomfort with the lack of precautions Long Branch was enforcing relating to the pandemic. Mr. Parker reports that the owner did not supply PPE to employees (although he did not prohibit Mr. Parker from wearing his own mask), and that he did not require customers and Door Dashers coming in for pickups to wear masks. Most likely, this was essentially a job quit with reasonable cause.

Beginning in the summer, most likely the week ending July 11, 2020, Mr. Parker became eligible for unemployment compensation (UC), and received UC benefits for a long time thereafter, most likely through the end of the date of the decision under review. Insufficient documentation was supplied with the record to determine the exact weeks of UC eligibility.

Mr. Parker's PUA claim was under advisement for a long period (during much of which, as previously mentioned, he was receiving UC). On November 30, 2020, the Division sent a letter to Mr. Parker stating that he was not eligible for PUA. The letter was sent to him care of Miranda Wagoner, and Mr. Parker was involved in domestic discord with Ms. Wagoner at the time. He did not receive the letter, and in retrospect the most likely explanation is that the mail was not turned over to him.

Mr. Parker had been told to be patient about resolution of his PUA claim. He continued to try to call DETS periodically to get an update, but often could not get through. He reached a live representative on February 16, 2021, who told him his claim had been denied and took his appeal.

Mr. Parker did not find substitute employment after leaving Long Branch in April of 2020. Initially, this was likely because of the scarcity of jobs in his profession during the pandemic. After December 1, 2020, there may have been superseding causes for his continued unemployment.

## **EXCERPTS OF RELEVANT PROVISIONS OF LAW**

### **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—

\* \* \*

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; . . .

**UIPL 16-20, Change 5 Issued by USDOL February 25, 2021**

Individuals who refuse to return to work that is unsafe or accept an offer of new work that is unsafe. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *“The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state,*

*or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines.”*  
[italics in original]

## **APPLICATION**

**Timeliness:** As the first excerpt above indicates, Mr. Parker needed to appeal within 30 days of the adverse decision against him, except that a reasonable delay is permissible if circumstances beyond his control caused the delay. Here, the decision was issued by mail on November 30, 2020. Applying the counting rules in Rule 6, his appeal would normally have been due January 4, 2021. His appeal was logged the following month.

The explanation for this is that Mr. Parker did not receive the November 30 letter. This occurred because the letter was sent to him care of Ms. Wagoner, and Mr. Parker was involved in domestic discord with her at the time and the mail was not turned over to him. It may be, of course, that Mr. Parker was the cause of the domestic discord, but there is no evidence of that in this proceeding. On the record presently available, Mr. Parker genuinely did not receive the notice letter and his failure to receive it was not his fault. In the meantime, he did attempt to remain in contact with DETS by phone, checking periodically to see if a decision had been reached, but it was indisputably almost impossible to get through during the winter. Eventually he reached a person and was told about the adverse ruling, and he appealed that day. On this record, it is slightly more likely than not that the failure to appeal sooner was due to circumstances beyond his control. The amount of extra delay is reasonable in the context of the very delayed processing of the entire application. The appeal will be deemed timely.

**Eligibility:** The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is unemployed because one of a list of reasons related to the COVID-19 pandemic and is not eligible for unemployment benefits under any State or Federal program. It appears to be undisputed that Mr. Parker was *found* ineligible for unemployment compensation prior to July of 2021, probably because of a determination (not endorsed here, but not reviewable here) that he was fired for cause. This means that it is possible for Mr. Parker to have PUA eligibility for the weeks when he was found ineligible for UC, provided he fits into one of the aforementioned list of reasons. The criterion that could apply to him is the new one in UIPL 16-20 Change 5 that was quoted above.

The central issue in this case, therefore, is whether Mr. Parker “refused to return to work . . . at a worksite that . . . [was] not in compliance with local, state, or national health and safety standards directly related to COVID-19.” I find that there is a sufficient link between Mr. Parker’s displeasure about safety precautions at Long

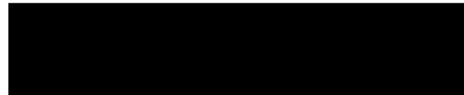
Branch, and his decision to leave that job, that it can be considered a precipitating factor for his unemployment. In making this finding in the context of mixed reasons for leaving, I apply the “close in time” standard discussed in *In re Hodges*, No. 05 0957 (DLWD Appeal Tribunal 2005).

However, to qualify him for PUA benefits, it is not enough for the practices that caused Mr. Parker to leave to be unwise or unfortunate. They must contravene actual local, state, or national *standards* related to Covid. On April 18, 2020, no local, state, or national standard required employers to supply PPE to restaurant workers, and no local, state, or national standard required restaurants to insist that pickup patrons wear masks. For example, Municipality of Anchorage EO-7, Att. E imposed the requirement to supply PPE to workers—but it did so on April 29, 2020, 11 days after Mr. Parker’s employment ended. The mandate for customers to wear masks came even later. Mr. Parker’s decision to leave Long Branch may have been justified, but it did not fit into any PUA eligibility category.

### DECISION

The appeal is timely. The determination issued on November 30, 2020 (Letter ID L0006513183) is **AFFIRMED**.

Dated: July 19, 2021


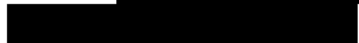



Christopher Kennedy  
Administrative Law Judge

### 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 19, 2021 the foregoing decision was served on Alexx Parker (by mail to  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