

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

In the Matter of)
)
ZACHARY DELONEY) OAH No. 21-1272-PUA
) Agency No. P21 474 03
_____)

APPEAL DECISION

Docket Number: P21 474 03

Hearing Date: August 10, 2021

CLAIMANT APPEARANCES:

Zachary Deloney

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Zachary Deloney, appealed an adverse determination issued November 5, 2021 (Letter ID: L0006077604) which denied him Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor referred the appeal to the Office of Administrative Hearings on June 1, 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, originally scheduled for August 5, 2021, was rescheduled at Mr. Deloney's request. It was heard in a recorded hearing on August 10, 2021. Mr. Deloney appeared telephonically and testified under oath. The Division of Employment and Training Services (DETS), whose determination is appealed, was notified of the hearing, but chose not to appear, and relies on the written documents it submitted.

There are two issues before the ALJ: first, whether Mr. Deloney's appeal period may be reasonably extended to avoid the bar for untimeliness; second, whether Mr. Deloney meets the eligibility requirements of the Act.

FINDINGS OF FACT

Zachary Deloney established a claim for Pandemic Unemployment Assistance benefits June 8, 2020, effective March 28, 2020. The Division determined that the claimant was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program. Specifically, the DETS found he had not provided information necessary to make a decision on a specific question of eligibility.

Zachary Deloney is 25 years old. He testified that he went to college in Olympia, Washington at South Puget Sound College, but left there in 2018. He testified that he was going to start working for his father, Travis Deloney, at “Freedom Auto Sales” as a lot technician, detailing used cars, checking them for basic maintenance, and making oil changes in March 2020. He believed he would be paid an hourly wage for the lot technician work plus a commission on any sales he made. When the Anchorage Emergency Order closed non-essential businesses¹, his father couldn’t hire him. After that, he said, the business went to appointment only and sales fell off. The lack of “walk in” traffic through much of 2020 reduced sales and meant that the business could not support adding a lot technician/salesperson.

Zachary Deloney testified he had watched his father sell cars growing up. Mr. Deloney testified his father Travis had an ownership interest in several auto-related businesses in Alaska and in other states. At the time of the hearing, Travis Deloney was traveling to Phoenix, Arizona, where Mr. Deloney’s sister is a partner with Travis Deloney in a used car lot, and then on to Florida.

Zachary Deloney testified he had found work around July 1, 2021 with a landscaping business but had hurt his back on the job and was not able to work at this time. He testified that he lives in the family home and that he was confused by the letters he received from the Department of Labor. He stated he had received letters saying he was eligible for benefits. He testified he has a laptop computer, and he knows how to use it, but that he had difficulty over the past year getting online.

The record supplied by the DETS does not contain a statement of facts indicating that a representative attempted to telephone Mr. Deloney, unsuccessfully or otherwise. The DETS record contains a screen shot of a COVID-19 Eligibility N6-FDFV-VFDK computer screen (Ex. 1, pg. 9) that has a blank Claimant Adjudication section (Ex. 1, pgs. 10-13) saying it was “issued” October 20, 2020 and had a “Response by Date” of November 3, 2020. An alert box on the first page states “Stop Benefit Payment” and on the second page states “Errors need to be corrected.” No explanation of the meaning of this form was provided by DETS or whether Mr. Deloney was ever notified that he needed to complete the form. It appears this form is the reason that the DETS claims that “no response has been received to the request for information related to your claim.” (Ex. 1, pg. 3).

EXCERPTS OF RELEVANT PROVISIONS OF LAW

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

(a) DEFINITIONS.—In this section:

• • •

¹ Municipality of Anchorage EO-03, issued March 22, 2020.

(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;

...

(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).

Alaska Statutes 23.30.340. Determination of claims.

...

(e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant

shows that the application was delayed as a result of circumstances beyond the claimant's control.

Alaska Statutes 23.20.415. Review by appeal tribunal.

(a) A party entitled to notice of determination provided in AS 23.20.340 may file an appeal from the determination to an appeal tribunal within the time specified in that section. However, an appeal from a determination which involves AS 23.20.383 shall be made to the department. The parties to an appeal from a determination shall include all those entitled to notice of the determination and a properly designated representative of the department.

APPLICATION


Mr. Deloney was mailed a copy of the Notice of Non-Monetary Issue Determination on November 5, 2020, which included Appeals Instructions. The letter was mailed to the address where Mr. Deloney testified he resides. From November 5, 2020, he had until Monday, December 7, 2020 to file an appeal. Instead, his appeal was filed March 1, 2020, 84 days later. Mr. Deloney’s confusion about the letters from the Department of Labor is not unreasonable and has been experienced by many PUA applicants. However, given the clear indication in the November 5, 2020 letter that his benefits are denied and its instructions for appeal, it was not so great as to be a circumstance beyond his control to remedy. I find it is not reasonable to extend the period for appeal 84 days in this case. Therefore, I must conclude that I cannot decide Mr. Deloney’s appeal and it must be dismissed as time-barred.

I find this regrettable as it appears that Mr. Deloney may not have been contacted by DETS for the missing information and that his disqualification for failure to respond was a computer-generated “glitch” that then was not uncommon. That he is monetarily eligible is clear from the March 22, 2021 Notice of Monetary Redetermination. He filed his claim before December 27, 2020. His testimony establishes that he had a colorable claim for PUA benefits under Section 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act, that could have been further substantiated by a statement from his employer. The dismissal of this appeal is not, therefore, a ruling on the substantive merits of Mr. Deloney’s claim, and the case will be remanded for further investigation by the DETS. Mr. Deloney should be prepared to contact the DETS and to maintain regular access his account online.

DECISION

The March 1, 2021 appeal is **DISMISSED** as untimely. The case is remanded to the DETS for further investigation.

Dated: August 13, 2021.


Kris Knudsen
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 August 13, 2021, the foregoing decision was served on Zachary Deloney (by mail and email to [REDACTED]). A copy was emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

[REDACTED] _____
Office of Administrative Hearings