

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

In the Matter of)	
)	
GERALD SOLO)	OAH No. 21 1264-PUA
_____)	Agency No. P21 475 03

APPEAL DECISION

Docket Number: P21 475 03

Hearing Date: August 4, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Gerald Solo

None

CASE HISTORY

The claimant, Gerald Solo, appealed an adverse determination issued October 19, 2020, which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136 from the week ending March 28, 2020. 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.

The matter was heard in a recorded hearing on August 4, 2021. The claimant appeared telephonically from North Pole, Alaska, and testified under oath. The record was left open until the end of the day Monday, August 9, 2021 to allow the claimant to submit additional records. The Division of Employment and Training Services (DETS), whose determination is appealed, chose not to appear, and relies on the written documents it submitted. Mr. Solo submitted a number of documents on August 9, 2020.

There are two issues before the ALJ: first, whether the appeal is barred by failure to file an appeal within 30 days of the determination, and second, whether the claimant meets the eligibility requirements of the Act.

FINDINGS OF FACT

Gerald Solo established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 28, 2020, based on the withdrawal of a job offer from "Get it Done Alaska", a snow removal and pavement maintenance firm in Fairbanks, Alaska, which he asserts was a direct result of the COVID-19 public health emergency. The DETS determined that the claimant was not eligible for PUA benefits because he

was not a covered individual under the program as he was not able to prove he was diagnosed with COVID-19 or experiencing symptoms of COVID-19.

Mr. Solo testified he had not intended to claim he had COVID-19, but that he “accidentally clicked the wrong box” and he couldn’t correct it after submission. He also testified he had initially failed to put the right letter ID number on his appeal sent January 18, 2021, and that this led to a delay in recognizing his appeal. Finally, he specifically withdrew any claim for benefits from April 4, 2020 through August 21, 2020, as he was not able and available for work in that period of time.

Instead, Mr. Solo’s initial letter appealing the October 19, 2020 denial was responded to on January 27, 2021 as follows:

Good morning,

The Letter ID is for an issue that has been cleared. If a determination has been made regarding a Covid-19 Eligibility denial and you would like to file an appeal please call in or send an email with the Letter ID # you are appealing along with your Last name, First Name, and Claim ID.

Please contact our office Monday through Friday, between 9:00 a.m., and 4:00 p.m., to discuss your Pandemic Unemployment Assistance claim with a representative. Due to security purposes we cannot by law offer any information in regards to your claim via electronic transmission.

Thank you,

Pandemic Unemployment Assistance
Alaska Department of Labor and Workforce Development

On January 28, 2021, Mr. Solo was sent a Notice of Non-Monetary Issue Re-Determination stating he was eligible for PUA benefits. However, he did not receive any benefit payments, nor has there been a later Notice of Non-Monetary Issue Determination stating that he is ineligible for benefits.

Mr. Solo testified that Charles Hills, the foreman at Get it Done Alaska, offered him a job as a laborer to begin in early April. He would be working clearing and repairing parking lots. The company did mostly commercial business, with some residential snow removal. For example, the company had the contract to clear, patch, and restripe all the Tesoro Parking lots in the area. Mr. Solo, who had been working mostly odd jobs, was looking forward to a consistent paycheck. Mr. Solo submitted a letter from Charles Hills, confirming an original start date of April 14, 2020 for Mr. Solo.

Then, unfortunately, Mr. Solo was incarcerated on April 4, 2020, so he was not able to begin working on the Get it Done Alaska crew. Mr. Solo testified that when he got out, he contacted Mr. Hills, and was told that the job was “still on the table” but that their business had shrunk due to the COVID-19 pandemic. Mr. Solo’s recollection was confirmed by Mr. Hills, whose letter confirms that Mr. Solo was still going to be hired

as soon as he was released. According to Mr. Hills, the company had a crew member contract COVID-19 (so all coworkers would have to quarantine) and lost business as COVID-19 impacted the demand for the company's services, so that the company had to rescind the job offer to Mr. Solo. Mr. Solo testified that he still sees a company truck around town, but that it is just the same crew. Mr. Solo testified that he has continued to be able and available to work, but he has not been able to get more than a few odd jobs through Craigslist and Facebook.

EXCERPTS OF RELEVANT PROVISIONS OF 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

(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); . . .

APPLICATION

Mr. Solo testified frankly and openly about his circumstances. He concedes he is not entitled to PUA benefits under Section 2102(a)(3)(A)(ii)(I)(aa). He withdrew any claim for benefits from April 4, 2020 through August 21, 2020 because he was not “able and available.”

Appeals must be filed within 30 days of mailing the determination issued by the DETS. Appeals may be filed by telephone, email, or written letter. In this case the letter containing the determination Mr. Solo appeals was sent October 19, 2020 (Ex. 1, pg. 5), so the appeal was due Wednesday, November 18, 2020. Even allowing a few days because of slower mail around the holidays, Mr. Solo’s first email to the DETS with the wrong Letter ID (L0005667419) was sent January 18, 2021 (Ex. 1, pg. 4), which is the 92nd day after the determination was sent to Mr. Solo. While the delay occasioned by attempting an appeal with the wrong Letter ID may be excused, the unexplained delay between November 18, 2020 and January 18, 2021 may not be excused.

However, it appears that Mr. Solo’s appeal is moot. The October 19, 2020 determination rested on Mr. Solo’s failure to provide medical documentation of a COVID-19 diagnosis or consultation with a medical provider. Mr. Solo agrees he was not diagnosed with COVID-19 and did not speak with a medical provider and asserts he mistakenly “clicked the wrong box.” In short, what Mr. Solo appeals is not the basis for the October 2020 denial, but the later failure of the DETS to pay benefits based on “little or no information from myself or my potential employer.” (Ex. 1, pg. 4). Indeed, from the record submitted by DETS, it does not appear that Get it Done Alaska was contacted, nor was Mr. Solo ever questioned about any earlier offer of employment. Instead, the questioner’s focus was on “self-employment”, while Mr. Solo’s was on his current state of unemployment. According to the questioner, Mr. Solo said, “I usually work through somebody” which suggests that he did not really consider himself “self-employed” in the sense of having his own business (Ex. 1, pg. 14), only that he sought out odd jobs he could do on his own when unemployed.

Mr. Solo was notified January 28, 2020 of a Re-determination decision that “You are entitled to receive Pandemic Unemployment Assistance Benefits as long as you are not disqualified or held ineligible for other reasons.” (Letter ID: L0009384579). This decision was prefaced by reference to the “potential eligibility issue for your Pandemic

Unemployment Assistance claim . . . identified on October 5, 2020, impacting your claim.” In other words, later information than the issue identified August 23, 2020, in the October 19 determination prompted the issuance of a new determination January 28, 2021 that Mr. Solo is eligible for benefits as well as the information that an earlier issue had been “cleared.” The record does not contain a later determination challenging Mr. Solo’s entitlement to benefits based on loss of a job offer from Get it Done Alaska after August 22, 2020. Therefore, it appears that DETS has reconsidered its earlier denial, and this matter must be remanded for recalculation of benefits owed to Mr. Solo.

In doing so, the parties are urged to take time to establish when benefits are due. While Mr. Solo’s offer of employment was rescinded, it is important to establish how long it would have lasted had COVID-19 not impacted Get it Done Alaska’s business. Mr. Solo is a painter – so it is likely that the commercial pavement painting and striping Get it Done Alaska does would have ended at some point in the year, thus limiting the weeks of employment Mr. Solo could have expected. As the guidance from the U.S. Department of Labor provides, “not being able to find a job because some businesses are closed and/or may not be hiring due to COVID-19 is not an identified reason” in Section 2102 of the CARES Act. UIPL No. 16-20, Change 2, Attachment I, Question 14, p. I-6, issued July 21, 2020.

DECISION



The appeal is dismissed as MOOT and the case is REMANDED for calculation of benefits in light of this decision.


Dated: August 10, 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 16, 2021, the foregoing decision was served on Gerald Solo (by mail to:  and by email to ). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings