

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

In the Matter of )  
 )  
RODRICK NEAL ) OAH No. 21-1275-PUA  
 ) Agency No. P21 489 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 489 03

**Hearing Date:** September 1, 2021

**CLAIMANT APPEARANCES:**

Rodrick Neal

**DETS APPEARANCES:**

None

**CASE HISTORY**

On March 1, 2021, the claimant, Rodrick Neal, appealed a January 25, 2021 determination by the Division of Employment and Training Services (DETS) which denied 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.

The matter was heard in a recorded hearing on September 1, 2021. Mr. Neal appeared telephonically and testified under oath. Although informed of the hearing, the DETS did not appear or make a representative available for hearing. Instead, the DETS relied on the documents it submitted in the appeal. Those documents were admitted without objection, but they did not include a copy of the determination that Mr. Neal appealed. The only determination in the record was dated November 17, 2020. The record was reopened to require the DETS to submit a copy of the January 25, 2021 determination and the supporting documents. Copies were sent to Mr. Neal on September 2, 2021, with a copy of the DETS explanation of the confusion. The record closed on September 3, 2021, after Mr. Neal was provided an opportunity to supplement the record.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act.<sup>1</sup>

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<sup>1</sup> The DETS also noted that the appeal was filed more than 30 days from the date of the decision appealed. However, given the confusion over the decision appealed (recorded as issued Jan. 25, 2021), it appears that Mr. Rodrick's appeal was only five days late. Mr. Neal related a confusing series of letters about his eligibility for PUA benefits as well as regular Unemployment Insurance benefits. He apparently interpreted a January 25, 2021 letter to

## **FINDINGS OF FACT**

Rodrick Neal established a claim for Pandemic Unemployment Assistance benefits effective September 14, 2020. The DETS 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, on November 17, 2020, it notified him that he had not lost his job due to COVID-19, but to termination at the end of his probationary period. On January 25, 2021, he was notified that he was not eligible due to failure to file quarterly on time.

Mr. Neal testified he applied for a job as a utility truck driver in Bethel, Alaska because a friend who worked for the City of Bethel told him about the opening. He was interviewed over the telephone and flew into Bethel after he was offered the job. He began work hauling water in an 18-wheeler tanker truck and picking up sewer in a pump truck. Mr. Neal was subject to a 90-day probationary period. On September 14, 2020, while still in his probationary period, he was approached by Clyde Erickson, his supervisor and told that he should take the truck back and he was “done.” Mr. Erickson told Mr. Neal that “he had been told by the guy above him to relay that he wasn’t needed anymore” and that “there was nothing he [Mr. Erickson] could do about it.” No further information about why he was terminated was given to Mr. Neal.

Mr. Neal had two theories as to why he was terminated. He had picked up a box at the post office on duty hours, whose contents were unknown to him. He still had the box when someone at work told him he shouldn’t have that box. He thought perhaps that person told the supervisor or manager about him picking up the box. His other theory was that he had put in to have time off so he could fly to Anchorage to see his children. He thought that perhaps he was let go because the flight would require him to quarantine on his arrival back in Bethel, so that he would miss work. He also speculated that they decided to lay him off in anticipation that he might not be coming back from Anchorage.

Mr. Neal stated he had never been given anything in writing about his termination and he had no paperwork on it. He couldn’t grieve the termination because he was in his probationary period. He applied for regular unemployment insurance compensation, but he was told he had too few hours to be eligible and that was when he decided to apply for PUA benefits. He argues that he did not voluntarily quit his job, and he has found it very hard to get other work since then. He argues he has earned some unemployment assistance, so he should receive something to help him get back to regular life without having to struggle with all his bills.

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mean he was eligible for regular UI benefits. In view of the confusion generated by the DETS correspondence, it is reasonable to extent the appeal period five days, so that this appeal is considered timely. 8 AAC 85.151(b).

## 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:

(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—

...

(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;

...

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(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 5, part 4.a** (US Department of Labor, Feb. 25, 2021).

iii. Individuals experiencing a reduction of hours or a temporary or permanent lay-off. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *“An individual is an employee*

*and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.”*

This new COVID-19 related reason expands eligibility beyond the current provision of item (jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act, which is limited to situations where the individual’s place of employment is closed. Under this new COVID-19 related reason, if an individual is laid off because the place of employment is partially closed (either permanently or temporarily) or the individual has experienced a reduction in hours, the individual may now self-certify eligibility.

Generally, individuals in covered employment who are laid off, are experiencing a reduction in hours, or are working part-time as a result of partial business closure would qualify for regular UC (or PEUC or EB) and therefore would not be eligible for PUA. However, such individuals may not be eligible for regular UC (or PEUC or EB) because, for example, they lack sufficient wages to qualify, have a previous disqualification, or have exhausted regular UC, PEUC, and EB. This expanded COVID-19 related reason establishes a circumstance under which they may self-certify eligibility for PUA. (*footnote omitted*).

### **APPLICATION**

Mr. Neal was employed by the City of Bethel as a utility truck driver or utility hauler. Mr. Neal was laid off when his supervisor came to him and told him to return the truck, he was “done.” At the time, he was in his probationary period. Mr. Neal has no paperwork to support why he was terminated. The employer’s human resources manager, Jake Sars, left a statement that “Not a single employee of the City of Bethel has been laid off due to COVID.” (Ex. 1, pg. 11).

Clearly, the City of Bethel was not closed and, at least as far as the City of Bethel maintains, no employees were laid off due to COVID-19. To be eligible for PUA benefits under Section 2102(a)(3)(A)(ii)(I)(jj), Mr. Neal must establish that he was laid off as a direct result of COVID-19. If, for example, he had been laid off because he was unable to return to work due to a requirement he quarantine on his return to Bethel, he could rationally assert that he was laid off as a direct result of the quarantine requirement or of COVID-19. But, here, Mr. Neal never took leave and was not actually employed when he flew back to Anchorage. Even if he had been employed, he would not necessarily have been subject to a quarantine in Anchorage or on his return to Bethel.<sup>2</sup> Finally, Mr. Neal’s proffered COVID-19 related reason is speculation, as he has no evidence beyond the timing of his request for leave and his subsequent termination to support his claim. It is equally possible that there were other reasons for the termination, as the story of the box suggests, or that the manager didn’t like

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<sup>2</sup> COVID-19 Health Mandate 010 Revision issued July 14, 2020, permitting arriving Alaska residents to avoid quarantine by a negative PCR test for COVID-19 within 72 hours of arrival.

his work. I conclude that Mr. Neal has not established that he was laid off as a direct result of COVID-19.

Mr. Neal has struggled to find work since he returned to Anchorage. He has not received PUA benefits. However, as the U.S. Department of Labor has instructed the states,

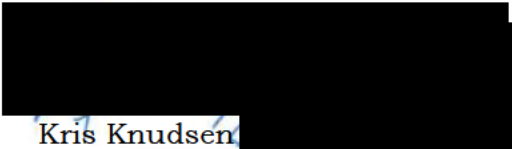
An individual is only eligible for PUA if the individual is otherwise able to work and available to work but is unemployed, partially unemployed, or unable or unavailable for work for a listed COVID-19 related reason under Section 2102 (a)(3)(A)(ii)(I) of the CARES Act. *Not being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason.*<sup>3</sup> (emphasis added)

Unfortunately, Mr. Neal falls into this group of ineligible individuals who are unable to find a job after losing one for a reason that is not a listed COVID-19 related reason. I conclude that Mr. Neal is not eligible for PUA benefits.

### **DECISION**

The determination of November 17, 2020, that Mr. Neal is not eligible for PUA benefits from the week ending September 19, 2020 is **AFFIRMED**.

Dated: September 3, 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 September 3, 2021, the foregoing decision was served on Rodrick Neal (by mail/email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

  
Office of Administrative Hearings

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<sup>3</sup> Unemployment Ins. Program Letter No. 16-20, Change 2, Attachment 1: Additional Questions & Answers about the Pandemic Unemployment Assistance (PUA) Program, issued July 21, 2020, pg. I-6.