

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

In the Matter of)
)
VANESSA OLSON) OAH No. 21-1294-PUA
) Agency No. P21 502 03

APPEAL DECISION

Docket Number: P21 502 03

Hearing Dates: July 28, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Vanessa Olson

None

CASE HISTORY

The claimant, Vanessa Olson, appeals a January 13, 2021 determination that denied 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 July 2021. Under the 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 recorded hearing took place on July 28, 2021. The record closed on August 4, 2021. Ms. Olson testified under oath. She planned to submit post-hearing documents, but nothing was received by the deadline. The Division of Employment and Training Services (DETS) provided written materials but was not a live participant.

DETS asserted that the appeal request was untimely. The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of the appeal disqualified the claimant from challenging the determination, and if not, whether she meets the eligibility requirements of the Act.

FINDINGS OF FACT

Ms. Olson established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 11, 2020. The Division determined that she was not eligible for benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program.

Prior to the pandemic, Ms. Olson had not been working for about four years. She became a stay-home parent around 2016 when her first child was born. In 2019, she began looking for the right opportunity to return to paid employment.

The claimant had friends who started two new businesses in 2019. Patrick Moore primarily ran a new automotive business; his wife Michelle Moore primarily operated a cleaning service called La La Cleaners. La La Cleaners offered home or business cleaning to residential and commercial customers.

Michelle Moore was the sole worker in the cleaning business for most of 2019. When she needed help, Ms. Olson started volunteering to help her get the business off the ground. She helped two or three times a month at first. She was not paid. By the end of 2019, Ms. Olson was helping about twice per week, up to three hours per workday. Toward the end of the year, Ms. Moore offered the claimant some compensation. She paid her three checks in 2019. The total compensation was less than \$200.

In late 2019, Ms. Moore offered the claimant a full-time job in the cleaning business. She was to start in January 2020 and would earn \$9.50 per hour.

Ms. Moore delayed the job start date more than once for reasons unrelated to COVID-19. The claimant had trouble getting in contact with Ms. Moore in January and February. Ms. Olson believes some of the delay was because Ms. Moore was hiring more than one worker, and she was trying to sort out scheduling and training. Mr. Moore also told her in February that one of Ms. Moore's parents was ill with COVID-19, and Ms. Moore was spending a lot of time outside Alaska to help her parents.

The claimant's start date was pushed back to March 2020. Sometime in February, she received a copy of a March work schedule that included her work assignments. Then, in late February, she learned that Ms. Moore was closing the business and moving out of state to help her parents or to be with her remaining parent after one parent died of COVID-19. Ms. Olson never started the job.

In mid-March, the claimant's daycare for her preschool-age children closed because of the pandemic. Ms. Olson does not feel the school closure would have impacted her ability to do the cleaning job. One of the reasons the job was a good fit was that she could bring her children to work when she needed to.

The claimant has continued looking for employment that works well with her family's schedule. She had not located a job as of the hearing date.

When it investigated Ms. Olson's claim, DETS was unable to contact Patrick or Michelle Moore to confirm the job offer. It also could not find a business license for La La Cleaners and could not verify it as a viable employer. Ms. Olson testified that Ms. Moore wrote a letter confirming the job and the reasons for its withdrawal. However, the letter and the draft March 2020 cleaning schedule were both lost in a house fire three weeks before the hearing.

The record remained open until August 4, 2021, to provide the claimant an opportunity to obtain and submit copies of those documents or to obtain a new letter from Ms. Moore.

Ms. Olson saw the Division's January 13, 2021 denial determination online shortly after it was issued. She never received the mailed copy. She submitted an appeal request through the online portal right away. She did not hear anything from the Department for more than a month. She called on March 4, 2021 and was told there was no record of her appeal request. The appeal was logged on March 4th.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

AS 23.20.340 provides in part:

- (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.

8 AAC 85.151 provides in part:

- (b) An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant'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 claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

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; . . .

* * *

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

APPLICATION

TIMELINESS: The claimant timely requested a hearing to contest the denial determination within the 30-day appeal period. The online portal's failure to record and process that request is a circumstance beyond her control. The appeal is accepted as timely filed.

MERITS: Ms. Olson asserts she was impacted by the pandemic when her job offer as a cleaner with La La Cleaners was retracted in late February. She contends the business suddenly closed as a direct result of COVID-19.

Though it lacked a business license, La La Cleaners was operational in 2019. It clearly was not a particularly profitable enterprise since the claimant was paid less than \$200 despite her steady assistance. Ms. Moore offered the claimant a job starting in January 2020, which Ms. Olson accepted.

For reasons that are not adequately clear in the record, Ms. Moore stopped actively operating the business in January and February 2020. She also stopped communicating with Ms. Olson, who even now does not know what happened with the business. The job start date was at least initially delayed for reasons unrelated to the pandemic. At some point, Ms. Moore was unavailable because she was out of state supporting her parents. In February, she decided to move out of state.

There is insufficient evidence to show that La La Cleaners was a viable business in 2020 prior to the pandemic, or that the job offer was withdrawn as a direct result of

the pandemic. There are simply too many unknowns to conclude that the pandemic directly caused the business's closure and job withdrawal. This is particularly true given that it was a new and apparently struggling business, the owner was delaying Ms. Olson's start date even before COVID-19, and she stopped responding to her inquiries well before COVID-19 was a widespread problem. Mr. Moore and Ms. Moore could not be reached during the PUA claim and appeal process to explain what happened.

The claimant did not show she is a covered individual for purposes of the PUA program.

DECISION

The determination issued on January 13, 2021 is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program.

Dated: August 6, 2021

[REDACTED]
For: Kathryn Swiderski
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 6, 2021 the foregoing decision was served on Vanessa Olson (by mail and by email to: [REDACTED]). A courtesy copy has been emailed to the DETS UI Technical Team, UI Appeals Team, & UI Support Team.

[REDACTED]
Office of Administrative Hearings