

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

In the Matter of)
)
TORI RAE CONNOR) OAH No. 21-1287-PUA
) Agency No. P21 531 03

APPEAL DECISION

Docket Number: P21 531 03

Hearing Date: August 12, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Tori Connor

None

CASE HISTORY

Tori Connor appealed a determination denying her Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0007335796, dated December 24, 2020, although a final decision does not seem to have been made until somewhat later, as discussed below. 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 August 12, 2021. Ms. Connor testified under oath and submitted extensive documentation. At its own election, the Division of Employment and Training Services (Division or DETS) provided only written materials for the hearing, and was not a live participant.

The issue before the ALJ is whether the claimant's appeal was timely and, if so, whether she meets the eligibility requirements of the Act.

TIMELINESS

Ms. Connor's appeal was flagged as untimely. Alaska Regulation 8 AAC 85.151 provides a 30-day window for appeal. The period may be extended for a reasonable time if circumstances beyond the claimant's control have led to a delay in appealing.

In this case, the record about when the decision was truly made is murky. Although an adverse decision letter seems to have been sent to Ms. Connor at a Petersburg address on December 24, 2021, DETS was still actively investigating her claim and collecting additional information from her for many weeks thereafter—calling her for information on January 29, 2021, interviewing her extensively on February 1 and

requesting further documents, and taking in those documents for consideration later in February. This would not convey to a reasonable applicant that her claim had been finally denied already. In these circumstances, Ms. Connor's appeal request, taken when she called in on March 2, 2021, cannot be deemed to be outside the time window for appeal.

Meanwhile, the December 24 letter was sent to her Petersburg address. December 24 was Christmas Eve, and it is reasonable to surmise that the letter did not arrive right away. As confirmed in the DETS file, Ms. Connor notified DETS on December 26, 2020 that she was travelling to the Lower 48 for a work opportunity. Regrettably, her address was then changed in the regular UI database, but not in the PUA database. Ms. Connor was not informed that a denial letter was on its way to her.

It should be noted that the March 2 appeal request was subsequently misplaced in the DETS system. Ms. Connor, who is diligent and persistent, eventually managed to get someone to find it and move the appeal forward.

FINDINGS OF FACT

Tori Connor established a claim for Pandemic Unemployment Assistance benefits that was effective the week ending March 28, 2020. The Division paid no benefits to her between that week and the week ending November 7, 2020, and eventually issued a denial for that period on the basis that she was not able and available for work during the time of her unemployment.

Ms. Connor has been doing commercial fishing on a seasonal basis for about 15 years. In the last seven years, her pattern has been to work a seven-month season, longlining with Shawn Gris from about April 1 through the end of May or a bit later, seining with Bill Connor in July and August (with some boat prep time in June), and fishing with Gris again to the first week of November. Because of prep time, there is ordinarily no down time between the Gris and Connor jobs; she transfers directly from one boat to the other. For the 2020 season, she had firm offers to do the same jobs again. With Gris, she had an arrangement to miss the first few days of work (he wanted crew by March 28, 2020), but to join the vessel during the first week of April.

Ms. Connor's pattern prior to the pandemic was to take five months off in the winter and to devote that time to other activities, including travel and volunteer work. In January of 2020, she traveled to Jaipur, India and worked in an orphanage (as a volunteer) for a month. She then volunteered for a week in another orphanage before traveling south to Goa, looking into future volunteering opportunities and also touring. She planned to leave India on March 26, 2020, reaching Alaska on March 28.

As COVID-19 began to dominate the news, she moved up her travel and reserved a flight out of Goa for March 22, with an onward connection from New Delhi on March 23. The international connection was canceled and India went into a nationwide, protracted lockdown. Ms. Connor was stranded in Goa. The US Government

organized an evacuation flight for Americans from Mumbai, 400 miles to the north, but the Americans caught in Goa could not reach it due to state border closures. Further efforts to get out by commercial means were also stymied. Efforts by Rep. Don Young, Sen. Dan Sullivan, and the U.S. State Department were to no avail. Ms. Connor could not, and did not, reach the United States until November 5, 2020.

Ms. Connor missed the jobs she had lined up for the entire 2020 fishing season. The direct cause of her inability to reach those jobs was a series of government-imposed travel restrictions in response to the COVID-19 pandemic.

Because she had missed her usual source of income for the year, Ms. Connor sought out and accepted winter employment in the Lower 48, starting the new job on January 1, 2021.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

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—

* * *

(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;

* * *

[italics added]

APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is not eligible for unemployment benefits under any State or Federal program and who is unemployed because one of a list of reasons related to the COVID-19 pandemic. It is undisputed that Ms. Connor had no ordinary wage employment in recent years and was not eligible for unemployment benefits.

There is no question that Ms. Connor fits PUA criterion (ee), quoted above: she could not reach her place of employment because of a travel quarantine imposed by the Indian government in response to the pandemic. The Division denied Ms. Connor benefits for a different reason, however. It determined that she was not “otherwise able to work and available for work” as required by the italicized language from the CARES Act quoted above.

In making this determination, the Division employee was likely relying on Benefit Policy Manual AA 150.1-11(K), which observes that “a claimant who travels in any country that does not have an agreement with the United States for taking reciprocal claims cannot establish availability for work,” apart from special circumstances such as travel to search for work. This led the employee to believe that it is essentially impossible for a person outside the United States to meet the “able and available” requirement in the CARES Act.

The error in this logic is that the Benefit Policy Manual, which was written for conventional unemployment claims, does not account for a special nuance of the “able and available” requirement in the context of PUA claims. That nuance is that “if the person is not able and available for work, . . . the covered individual is *deemed* to meet the ‘able and available for work’ requirement if the inability or unavailability to work or engage in self-employment is *caused* by the COVID-19 public health emergency” [italics added]. The quoted language, and a much fuller explanation of how this key principle can be drawn from applicable federal regulations, is found in *In re Causey*, P21 526 (OAH for Dep’t of Labor, Aug. 2, 2021).


If Ms. Connor had been unavailable for alternative work due to something unrelated to COVID-19, such as an ordinary illness or a pregnancy, she would indeed be ineligible for PUA. But the thing that made Ms. Connor unavailable was precisely the disaster itself, the very thing that PUA was intended to cover. In this circumstance, disaster assistance doctrine and federal regulations provide that she is *deemed* to meet the able and available requirement.

The Division was correct to deny PUA for the week ending March 28, 2020, because Ms. Connor’s job with Mr. Gris would not have started until after that week. However, Ms. Connor is eligible for PUA from the following week through the normal end of her fishing season.

DECISION

The appeal is timely. The determinations in Letter ID L0007335796 is **MODIFIED**. *The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program from the week ending April 4, 2020 through the week ending November 7, 2020. There is no subsequent eligibility in 2020 or 2021.*


Dated: August 16, 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 August 16, 2021 the foregoing decision was served on Tori Connor (by mail and by email to ). A copy was emailed to the UI Support Team, UI Technical Team, and UI Appeals Office.


Office of Administrative Hearings