

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

In the Matter of)
)
HOWARD JOSEPH) OAH No. 21-1449-PUA
) Agency No. P21 660 03
_____)

APPEAL DECISION

Docket Number: P21 660 03

Hearing Date: August 3, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Howard Joseph

None

CASE HISTORY

The claimant, Howard Joseph appealed an adverse determination issued October 21, 2020, 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 July 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 3, 2021. Mr. Joseph appeared telephonically from Ft. Yukon, Alaska, and testified under oath. At the conclusion of the hearing, the record was left open for him to submit further documents until Monday, August 9, 2021. In addition, his sister, who he had called as a witness, but was unavailable, was given instructions on how to submit a witness statement by Monday, August 9, 2021.¹ The Division of Employment and Training Services (DETS), whose determination is appealed, was notified of the hearing, but chose not to appear. The DETS relies on the written records it submitted.

The issues before the ALJ are whether the claimant established good cause to extend the time for appeal, and, if so, whether the claimant meets the eligibility requirements of the Act.

FINDINGS OF FACT

Howard Joseph established a claim for Pandemic Unemployment Assistance benefits effective the week ending May 2, 2020. The Division determined that the claimant was

¹ A date error occurred in the instructions referencing the prior month (July) instead of August; however, in context, and verbally to Mr. Howard, it was clear that he had a week to get a statement to the Office of Administrative Hearings.

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, because he had not shown he had a start date for a job at the City of Ft. Yukon. This determination was mailed October 21, 2020. Mr. Joseph filed his appeal by telephone on April 9, 2021.

Mr. Joseph testified he is a heavy equipment mechanic and operator, the only one available in Ft. Yukon, unless someone wants to “fly in one from Northern Equipment.” Mr. Joseph said that he heard that the City and the tribal government had gotten together to get a grant to replace the fence that was around the town dump. Part of this fence had been taken to surround a water treatment plant. He heard that the job had gotten funding and was expecting to be called to work on the equipment that had been sitting all year – to service the machinery so it could be started and used. He expected it would take about 3 weeks to get everything going again. Then, he’d be able to do the earth moving that the job required. However, he never got called. He believes that the funding lapsed.

Mr. Joseph said that he didn’t appeal the decision in October because he lost track of it. He said that he expected he was going to go to work soon in Spring anyway, but that also fell through. Mr. Joseph said that his sister, Arlene Peters, would be able to confirm that she told him about the upcoming job. Arlene Peters, Mr. Joseph explained, was the Mayor of Ft. Yukon, so she would have known about the job.²

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

...

² Ms. Peters is also a tribal court judge.

(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; 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 1, issued by the Secretary of Labor on April 27, 2020, added eligibility provisions under Section 2102(a)(3)(A)(ii)(I)(kk): An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of the COVID 19 reasons listed above, including an independent contractor who experiences a “significant diminution of work as a result of COVID-19.

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.

APPLICATION

I find that consideration of this appeal is barred because the appeal was filed too late, and good cause was not shown to extend the 30 day time period a further 140 days beyond the deadline for appeal, which was November 20, 2020. Mr. Joseph acknowledged getting the Notice, which was “in a pile of them in the back room.”

However, failing to act because there is a possibility of another job in the future is not good cause – i.e., a circumstance beyond the appellant’s control. Instead, the choice not to act immediately was an exercise of the appellant’s control over his time and rights.

I also note that Mr. Joseph did not submit evidence that would substantiate his statement regarding an expectation of employment by the City of Ft. Yukon. No statement from Ms. Peters was received.

DECISION

The appeal is **DISMISSED** as untimely and barred by 8 A.A.C. 85.151(b).

Dated: August 11, 2021.




K/S 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 12, 2021, the foregoing decision was served on Howard Joseph (by mail and email to ). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.



Office of Administrative Hearings