

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

In the Matter of)
)
MARTIN FLEMING) OAH No. 21-1434-PUA
) Agency No. P21 671 03
_____)

APPEAL DECISION

Docket Number: P21 671 03

Hearing Date: August 4, 2021

CLAIMANT APPEARANCES:

Martin Fleming

DETS APPEARANCES:

None

CASE HISTORY

Michael Fleming appealed a February 10, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0009795531. Mr. Fleming filed his appeal on April 7, 2021.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on July 1, 2021. Under the terms of referral, an administrative law judge (ALJ) hears and decides the appeal under procedures specific to PUA appeals. AS44.64.060 procedures do not apply. The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act.

The matter was heard in a recorded hearing on August 4, 2021. Mr. Fleming testified under oath. At its own election, the Division of Employment and Training Services (DETS) provided only written materials for the hearing and was not a live participant.

The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of Mr. Flemings appeal disqualified him from challenging the determination of ineligibility, and, if not, whether Mr. Fleming meets the eligibility requirements under the act.

ISSUE: TIMELINESS OF APPEAL

EXCERPTS OF RELEVANT PROVISIONS OF LAW - TIMELINESS

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.

FINDINGS OF FACT: Timeliness

Mr. Fleming testified that he received and read the February 10, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits. He testified that he understood that the letter informed him that he had been denied benefits. He testified that he understood that he had 30 days to file an appeal. He testified that he decided not to file the appeal as the delay in getting any ruling on the issue indicated to him that an appeal would be useless. He testified that on April 7, 2021 he called the Department of Labor because he got a letter that seemed to say he qualified for benefits and he was confused. He reports that the person he talked to encouraged him to file the appeal, and she helped him to do so on April 7, 2021.

CONCLUSION - TIMELINESS

The claimant has the burden to establish that some circumstance beyond his control prevented the timely filing of the appeal. The claimant did not meet this burden. His primary reason for not filing, that he thought it would be fruitless, is not sufficient to excuse late filing.

DECISION - TIMELINESS

The claimant's appeal from the notice of determination issued on February 10, 2021 is not timely.

ISSUE: Eligibility

FINDINGS OF FACT

Mr. Fleming’s connection to the workforce in 2019 was through gig work clearing parking lots of gravel and other winter detritus. He was hired to clear the parking lots at Our Lady of Guadalupe and The Holy Rosary Academy. The work at Our Lady of Guadeloupe was performed in April – June. He was paid \$10.00/hour and estimates that he earned between \$500.00 and \$600.00 dollars annually. The work at Holy Rosary Academy was in May 2019. He also received \$10.00/hour and estimates that he earned \$200.00 total. In 2019 he also did gig work for D&D services. In this role he did small janitorial work, yard maintenance and built and stained a deck. For this work he earned \$15.00/hour. This work was performed in June and July 2019.

In January 2020 Mr. Fleming thought about starting a business offering in-home care for patients that needed help with cooking, cleaning, outdoor lawn care, etc. He admits that this business never got organized or started.

In 2020 he worked the same parking lot clearing jobs at Our Lady of Guadeloupe and Holy Rosary Academy as he had in 2019. He earned the same amount of money. He does not claim that this work was negatively impacted by Covid-19. In July, August and September 2020 he performed home maintenance assistance to a person [Brian Frylies] who was ill from Covid-19. In that role he was provided room and board and paid about \$400.00 in cash. He identifies this activity as the kind of activity he had thought of doing as a business. He acknowledges that he did not try to find more of this kind of work after Mr. Frylies died. This job ended when the patient died of Covid-19 on September 29, 2020.

Mr. Fleming was candid that he did not look for any work in 2020 other than his past pattern of working for Our Lady of Guadalupe and Holy Rosary Academy and caring for Mr. Frylies. He acknowledges that he earned as much, if not more in 2020 than he had in 2019. Mr. Fleming also acknowledged that so far in 2021 his sole employment has been the same work at Our Lady of Guadeloupe and Holy Rosary Academy that he did in 2019 and 2020.

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—

(l) 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—

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;


APPLICATION

The documentary and testimonial evidence from the August 4, 2021 hearing establishes that Mr. Fleming was attached to the work market in 2019 and in 2020, as an individual that did gig work in home and outdoor maintenance. The testimony also established that his ability to work, and his income received was not significantly impacted by Covid-19 and that Covid-19 related events were not the cause of his unemployment.

DECISION

It is the determination of this tribunal that Mr. Fleming's situation does not fit the definition of a covered individual pursuant to The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance. The DETS determination that he is ineligible for PUA benefits is **AFFIRMED**.

Dated: August 5, 2021,



Karla F. Huntington
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 5, 2021, the foregoing decision was served on Michael Fleming (by mail). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

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Office of Administrative Hearings