

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

In the Matter of)
)
MISTY AMENT) OAH No. 21-1435-PUA
_____) Agency No. P21 688 03

APPEAL DECISION

Docket Number: P21 688 03

Hearing Date: August 4, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Misty Ament

None

CASE HISTORY

Misty Ament appealed a July 6, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0003473903. The Notice of Non-Monetary Issue Determination stated that Ms. Ament was not eligible for PUA benefits because she was eligible for State or Federal unemployment benefits.

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. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on August 6, 2021. Ms. Ament testified telephonically and under oath. At its own election, the Division of Employment and Training Services (Division) provided only written materials for the hearing and was not a live participant. The documents provided by the Division were identified as Exhibit 1 and were admitted at the hearing.

On August 5, 2021 an Order to Reopen the Record was issued. On August 19, 2021 a request for information was sent to the Division. The Division responded on August 23, 2021. The Division's response is identified as Exhibit 2 and is hereby admitted into evidence. Ms. Amend filed a letter in reply to Exhibit 2. Her reply is identified as Exhibit A and is hereby admitted into evidence.

FINDINGS OF FACT

Timeliness

This issue is complicated by the fact that Ms. Ament was communicating with the Unemployment branch of the Department of Labor(DOL), and the PUA branch of theDOL, and each were giving her conflicting information. When she tried to contact either branch to seek an appeal, or to clarify their interrelated rulings, she was unable to get through on the phone. She was also unable to get a response to emails. Ms. Ament credibly testified that she tried to call either of the branches almost daily for months and would be on hold for ages, and then disconnected. She testified that sometimes she was able to leave a request for a ‘call back’ but no one called her back. She then started sending emails and still did not get a response. The last email she sent, on April 7, 2021 ¹ resulted in Division staff lodging an appeal on her behalf.

Ms. Ament’s difficulties in navigation between the two branches of the DOL added to her confusion about what decisions were being made and which she had to appeal. The Division has acknowledged that “Many claimants have incorrectly filed PUA because they were unable to get through when the phone lines were constantly busy.”²

Ms. Amend also had significant medical problems that began in June 2020 and were not resolved until March 2021. In October 2020 Ms. Ament had emergency surgery to stop internal bleeding. She was not able to get the follow up surgery until February 2021. She was able to finally have the surgery when her hospital gave her a grant to cover some of the costs.

This tribunal finds that Ms. Ament was diligent in trying to untangle who to contact and when and did not delay filing in bad faith.

Moreover, her inability to get thought the overburdened phone system was not within her control and contributed to her long delay in filing the appeal.

Merits

1. *Scope of appeal limited to eligibility for PUA benefits*

Ms. Ament was fired, or laid off, from a job with Beckmann LLC in 2019. She applied for unemployment benefits. That process was delayed, but ultimately, she began receiving UI benefits. When these benefits ran out on April 4, 2020, she was instructed by DOL staff to apply for PUA benefits. She did. She was deemed eligible for PUA benefits. On May 11, 2020 she began receiving weekly PUA benefits. She was also paid retroactive benefits from the week of April 4, 2020.³ She was then contacted by DOL and instructed to apply for PEUC benefits. The PEUC application was filed on

¹. Exhibit 1: Page 3. See, also, Exhibit A.

². Exhibit 2: Page 2, Paragraph 5.

³. Exhibit 1: Page 16.

June 29, 2020. Those PEUC benefits were then backdated to April 5, 2020 which, retroactively led to double payments for the weeks from April 5, 2020 through the week ending May 23, 2020.⁴

The Division issued a re-payment demand on November 5, 2020⁵. She made the same, diligent, and fruitless attempts to contact the Division about this issue. When Ms. Ament finally got a response from the DOL, after her April 7, 2021 email, she thought that they were also filing an appeal on the overpayment issue. However, this matter was referred to OAH only to review the PUA eligibility, and, while Ms. Ament may have good reason to object to recoupment of the overpayments, that issue is not yet ripe and this tribunal does not have jurisdiction on that issue.

2. *Ms. Ament was not eligible for PUA benefits.*

Ms. Ament lost her job at Beckmann in 2019. The loss of that job was not related to Covid 19. Ms. Beckmann had not obtained other work by the time Covid-19 closures began in March of 2020. Ms. Beckmann applied for several jobs, both in her field of property management, and for any other job openings she could find. She was not hired. When she was looking for work in March – May 2020 her daughter’s school was placed on remote learning and stayed on remote learning until the school year ended.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

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—

⁴. Exhibit 2. Page 2: Paragraph 5.

⁵. Letter ID. No. L0006047027.

(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;

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(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;

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APPLICATION

Ms. Ament was not a covered individual as defined by The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102. During the timeframe when she might have been eligible, she was entitled to State or Federal unemployment benefits.

Moreover, her job at Beckmann LLC ended in 2019, before Covid-19 was an issue. Ms. Ament did not obtain other employment which then ended due to Covid-19 issues. While she did have a child in remote learning from March 18, 2020 to the end of the 2019-2020 school year, Ms. Ament did not have a job that she was missing or had to quit to provide that care. Thus section (dd) of the CARES Act does not apply.

Ms. Ament filed for PUA benefits because she was instructed to do so. She acted in good faith, but she is not qualified to receive PUA benefits.

This tribunal does not have jurisdiction over Ms. Ament's request to have the overpayment obligation waived. If the Division decides to request repayment after reviewing this decision then, Ms. Ament is entitled to the right to file a request for waiver of the obligation, and to appeal if there is a denial of that request. This tribunal is not retaining jurisdiction over that issue.

If the division continues to seek recovery of previously paid benefits after this decision Ms. Ament can apply for a waiver from repayment. No waiver will be granted if she does not seek it. If a waiver is sought but not granted, Ms. Ament must be given a separate appeal hearing on that issue if he requests. This decision will affect repayment of previously approved benefits. The Division has advised the OAH that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available Ms. Ament can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

DECISION

It is the determination of this tribunal that Ms. Ament'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 of July 6, 2020 is **AFFIRMED**.

Dated: November 22, 2021,

[REDACTED]
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 November 30, the foregoing decision was served on Misty Ament (by email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

[REDACTED]
Office of Administrative Hearings