

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

In the Matter of)
)
GERALYN STRAUGHN) OAH No. 21-1323-PUA
) Agency No. P21 695 03
_____)

APPEAL DECISION

Docket Number: P21 695 03

Hearing Date: August 5, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Geralyn Straughn
Annie Grubbs (witness)

None

CASE HISTORY

The claimant, Geralyn Straughn, appealed a January 28, 2021 determination that denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision found that the claimant was not impacted by COVID-19 in a manner that made her a “covered individual” as defined by section 2102 of the Act.

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 August 5, 2021. DETS provided written materials but was not a live participant. Ms. Straughn testified under oath and submitted documents. Her mother, Annie Grubbs, also testified.

DETS asserted that Ms. Straughn’s appeal 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. Straughn established a claim for Pandemic Unemployment Assistance effective the week ending February 8, 2020. DETS initially approved the claim and issued benefits for the week ending May 30, 2020 through the week ending November 14, 2020. On January 28, 2021, it redetermined the case and found the claimant was not eligible for the program. It requested repayment of benefits issued.

The claimant received the denial determination in the mail just before the 30-day appeal period closed. She immediately called DETS and stated her disagreement with the decision. She reports that DETS took her information but did not log the call as an appeal request. The appeal was not recorded until she called again on March 12, 2021, about 11 days after the appeal request was due.

Ms. Straughn has not been steadily attached to the labor force in recent years. She has a brain injury that can make information processing difficult, and she can get confused. She applied for SSI disability benefits and was awaiting a decision in 2019 and 2020. Her disability claim was approved in 2021.

Ms. Straughn worked a temporary job at the Alaska State Fair in August 2019. She moved to Texas to be near her mother in September 2019. To generate some income while she waited for a disability determination, the claimant started a very small dog-walking and dog care business on March 11, 2020. She went door to door in her neighborhood to advertise her services. She earned a total of \$45 from a couple clients, \$20 of which she paid to an assistant who helped with dog walking. Ms. Straughn paused the business because it wasn't generating enough income and she believed that COVID-19-related stay-home or shelter in place orders prevented her from continuing.

On April 21, 2020, Ms. Straughn answered a Facebook ad seeking a tutor. Amanda Wallis¹ was looking for someone to tutor her two daughters while they were doing online school due to the pandemic. She wanted a tutor three times per week, 3 hours per session (90 minutes with each child). She offered to pay \$15 per hour.

The claimant interviewed for the job on Thursday, April 23, 2020 and started work the same day. She tutored for three sessions between April 23rd and April 28th. On Wednesday, April 29, 2020, Ms. Wallis sent a message cancelling tutoring because one of the children was in the hospital. She recognized that she owed the claimant for the past Monday's session. On May 4th, Ms. Wallis messaged that she and the child were still at the hospital and she would try to find someone to deliver payment to Ms. Straughn.

The claimant asked via Facebook Messenger whether she had done anything to upset Ms. Wallis or if Ms. Wallis had concerns about the job. Ms. Wallis responded "no" and explained that the child was recovering from two surgeries so there could be no tutoring before mid-May. Ms. Wallis then stopped responding to the claimant's messages. No further tutoring sessions took place. Ms. Straughn and her mother testified that the claimant was never paid for her tutoring work.

¹ This decision refers to Amanda Wallis. Places in the record also refer to her as Amanda Wallace.

Ms. Straughn does not know why the child was in the hospital or what surgery she needed. There is no evidence indicating the hospitalization or surgery were COVID-19-related.

At some point, the claimant asked Ms. Wallis to sign a statement indicating that she lost the tutoring job because of the COVID-19 pandemic. Ms. Wallis declined but said she would speak with DETS.

A Division representative spoke with Amanda Wallis on January 25, 2021. Ms. Wallis reported ending tutoring because she was unhappy with Ms. Straughn's job performance. She indicated that her 5th grade child scored a 30% score on a subject she had studied with the claimant. The child had never done so poorly. Ms. Wallis concluded that Ms. Straughn's long division instructions were incorrect. Ms. Wallis also reported that the claimant took smoking breaks every ten minutes and was more focused on her phone than on tutoring. She claimed she paid the claimant \$100 for two tutoring sessions and told her she did not want her back because of her poor work. She emphasized that COVID-19 was not the cause of Ms. Straughn's lost employment.

The claimant agrees Ms. Wallis declined to sign the statement she prepared but asserts Ms. Wallis never told her she ended tutoring because of her work quality. She also disputes that she was paid \$100 for the first two tutoring sessions.

Ms. Straughn applied for regular unemployment compensation and PUA benefits in Texas, where the impacts to her self-employment took place. Texas apparently denied benefits and advised her to apply in Alaska.

RELEVANT STATUTORY PROVISIONS

Alaska Regulation 8 AAC 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. [italics added]*

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—

(aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID–19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID–19;

(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;

(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;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

(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;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID–19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(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

(ll) 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 (UIPL) 16-20, Change 2, Issued July 21, 2020, by the U.S. Department of Labor:

Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16-20, Change 1, explains that an independent contractor who experiences a “significant diminution of work as a result of COVID-19” may be eligible for PUA. With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

* * * *

14. Question: If an individual becomes unemployed for reasons unrelated to COVID-19, and now is unable to find work because businesses have closed or are not hiring due to COVID-19, is he or she eligible for PUA?

Answer: No. An individual is only eligible for PUA if the individual is otherwise able to work and available to work but is unemployed, partially unemployed, or unable or unavailable for work for a listed COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Not being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason.

APPLICATION

TIMELINESS: As the first excerpt of law above indicates, a claimant has 30 days to appeal a denial determination. Ms. Straughn testified that she contacted DETS within the 30-day period. The agency's failure to log her appeal request that day is a circumstance outside her control. Her appeal is accepted as timely filed.

MERITS: The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance (PUA) 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 of one or more listed reasons related to the COVID-19 pandemic.

The claimant is not eligible for benefits from other unemployment programs. She asserts she was directly impacted by COVID-19 in late April 2020 because she could not continue her dog-walking business due to stay-home orders and because she was laid off from her tutoring job due to COVID-19.

Ms. Straughn is not eligible for PUA based on any Alaska income sources. All asserted impacts relate to her self-employment efforts in Texas, which should be the state evaluating her PUA claim and paying any benefits to which she is entitled. Even accepting that Alaska may adjudicate this claim, however, it cannot be sustained.

The dog-walking business was new and started during the pandemic. To qualify as a self-employed person whose business was directly impacted by the pandemic, Ms. Straughn must show "reportable income" from the enterprise. She also must show that the pandemic severely limited her ability to continue performing customary work activities or that it directly caused a significant diminution of work and income.

The dog walking business did not involve any reportable income from the enterprise that the pandemic impacted. The claimant earned \$25 after she paid her assistant. She paused the business primarily because it was not generating adequate revenue. The business lacked a pre-pandemic revenue history from which to measure whether a significant diminution of income occurred as a direct result of the pandemic.

The claimant asserted that Texas stay-home orders prevented her from carrying on the dog-walking business after late April 2020. She did not submit evidence showing this to be true, however. Even if there was a temporary stay-home order, it likely was short-lived and did not foreclose all dog walking business activities after late April 2020.

Regarding the tutoring job, which ended after three sessions in late April 2020, the weight of the evidence does not show the job ended as a direct result of the COVID-19 pandemic. The child's medical situation and surgeries were not shown to be COVID-related. Ms. Wallis told DETS she was unhappy with the claimant's quality of work. Her credibility was called into question since she claimed to have paid Ms. Straughn, while Ms. Straughn and her mother both testified that she didn't.

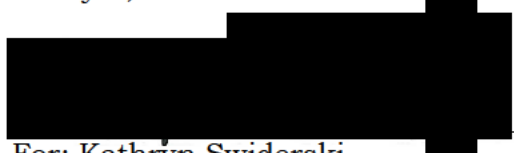
Regardless of the payment issue, however, Ms. Wallis never gave the claimant a reason to believe the pandemic directly caused the job to end. She mentioned hospitalization and surgeries and then simply stopped responding to the claimant's messages. When the claimant located her months later, she refused to sign a statement saying the job ended because of COVID-19. She told DETS COVID-19 had nothing to do with her decision to move on. Though the claimant may genuinely believe otherwise, the overall evidence does not support her position.

The facts of this case do not fit any of the identified reasons in the CARES Act for PUA eligibility. The claimant therefore does not meet the definition of a covered individual. If she has questions about repayment options for overpaid benefits, or if she would like to request a waiver of the repayment requirement, the Department has advised that its Benefit Payment Control (BPC) office handles these issues. The claimant can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

DECISION

The determination dated January 28, 2021 is **AFFIRMED**. The claimant is not eligible for PUA benefits for the week ending February 8, 2020 or thereafter.

Dated: August 9, 2021


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 9, 2021 the foregoing decision was served on GERALYN STRAUGHN (by email to: [REDACTED]). A courtesy copy was emailed to the DETS UI Technical Team, UI Appeals Team, & UI Support Team.

[REDACTED]
Office of Administrative Hearings