

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

In the Matter of)
)
AMY PATTERSON) OAH No. 21-1483-PUA
) Agency No. P21-699-03
_____)

APPEAL DECISION

Docket Number: P21-699-03

Hearing Date: August 24, 2021

CLAIMANT APPEARANCES:

Amy Patterson

DETS APPEARANCES:

None

CASE HISTORY

Amy Patterson appealed an October 28, 2020 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0005843092. When denying eligibility the Division noted that Ms. Patterson had not established that she had legitimately been offered a job which was then terminated due to Covid-19. Ms. Patterson did not file her appeal until April 19, 2021.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on August 2, 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 24, 2021. Ms. Patterson appeared telephonically and 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 Ms. Patterson's appeal disqualified her from challenging the determination of ineligibility, and, if not, whether Ms. Patterson meets the eligibility requirements under the act.

FINDINGS OF FACT

TIMELINESS

Ms. Patterson confirmed that she had received the October 28, 2020 letter denying her eligibility for PUA benefits. She explained that she then misplaced the letter and didn't think about it until April 2021 when she located it and called the Division to lodge her appeal. She confirmed that there had not been a house fire, that she had

not moved or otherwise experienced an event beyond her control that prevented her from filing a timely appeal. She stated she just lost it in the clutter of her home and busyness of her life.

MERITS

Ms. Patterson described two employment situations she believed qualified her for PUA benefits. These were with Ms. Smith, as a hair-care apprentice at Raven Hair Studio in Palmer, Alaska, and a job with Shiny Hiney Car Detail in Anchorage, Alaska. At the evidential hearing she also testified regarding her furniture refurbishing activities.

In 2017 or 2018 Ms. Patterson partially finished a Trendsetter's course for a Barber's License. She did not work in the field of hair care in 2019. In January 2020 a family friend put Ms. Patterson in contact with Janelle Smith. Ms. Smith was an independent contractor who rented a chair at Raven Hair Studio in Palmer. Ms. Patterson contacted Ms. Smith and they discussed arranging for Ms. Patterson to earn hours and credits toward the Barber's License while working for Ms. Smith and helping with Ms. Smith's patrons. Ms. Smith was interested in the plan and told Ms. Patterson that she would to 'get back to her' in February to set it up. In February 2020, when Ms. Patterson had not heard from Ms. Smith, Ms. Patterson called Raven Hair Studio to talk to Ms. Smith and follow up on the job plan. She was informed that Ms. Smith no longer worked there. Ms. Patterson had no further contact with Ms. Smith.

After the hair care job fell through Ms. Smith talked to Ed Mooney who runs Shiny Hiney Auto Detail. She contacted him sometime after the initial Covid-19 closures began. He was interested in hiring her, but he did not set a start date, and he did not commit to hiring her. He merely told her that he would call her if there was work. She did not hear back from him.

In late 2019 Ms. Patterson considered transforming a personal hobby of buying and refinishing furniture into a small business. Instead of just selling pieces to friends, she began to advertise on Marketplace when she had a piece available to sell. She estimates that her gross proceeds, before the cost of the furniture and paints, was \$3,000 - \$4,000 in 2019. She continued into 2020 but was doing less of it as she prepared to start with Raven Studios. In January 2020 she sold a pair of nightstands for \$100.00. In February she sold a headboard for \$100.00. She sold nothing the first 2 weeks of March 2020 and sold a \$40.00 shoe rack in late March. In April she sold nothing. She acknowledged that Covid-19 had not severely limited her ability to continue to operate as she had before Covid-19. She could still buy and refurbish 1-2 pieces of furniture a month and she could still meet with the buyer to transfer the piece. She acknowledged that the financial impact of Covid-19 closures on this enterprise was minimal.

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—

(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—

...

(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;

...

(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)

UIPL 16-20, Change 2 Issued by USDOL July 21, 2020

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.

APPLICATION

TIMELINESS

Ms. Patterson filed her appeal more than five months late. She had the burden of proving that her tardiness was caused by circumstances beyond her control and that there was good reason for the delay in filing. She has not met her burden. The mere fact that she ‘lost’ the letter in her home does not justify waiting 5 months to file an appeal.

MERITS

The documentary and testimonial evidence from the August 24, 2021 hearing establishes that Ms. Patterson would not prevail on her claim that she was a covered individual even if the appeal had been timely. The facts do not establish that there was in fact a firm offer to start working for either Ms. Smith at the Raven Hair Studio or at the auto detailing job with Shiny Hiney. In both situations she and the business owner had a plan to consider having her work with them. That is not the same as a firm job offer. The expectation that Ms. Smith would hire her clearly ended when Ms. Smith did not get back to Ms. Patterson to set up the job. That job possibility fell through before the end of February 2020 and thus its loss was not related to any Covid-19 factors.

The situation with the auto detailing job was similar. She contacted the company for a job after Covid-19 closures had begun. They did not offer her a job. They simply said that they would call her if there was work for her. That is not a firm job offer. By

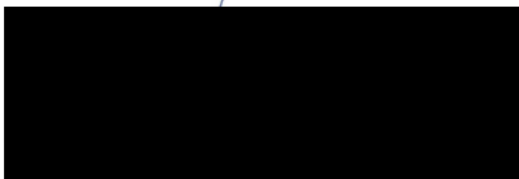
extension, she did not lose this job due to Covid-19, rather the auto detailing company simply did not offer her a job.

Lastly, the furniture refurbishing activities appear to be a legitimate connection with the workplace that began in 2019 and continued, at a slower pace, into 2020. In that regard she is an independent contractor, who had a small business buying, refurbishing and selling furniture. However, Ms. Patterson's ability to make income from that activity was not significantly reduced by Covid-19 and it remained mostly a hobby activity.

DECISION

It is the determination of this tribunal that the appeal is **UNTIMELY**. It is also the determination of this tribunal that the appeal would not have been successful even if it were deemed timely. Ms. Patterson'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 October 28, 2020 that she is ineligible for PUA benefits is **AFFIRMED**.

Dated: October 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 October 6, 2021, the foregoing decision was served on Ms. Patterson (by mail). A 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