

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

In the Matter of)
)
DAVID P. NEUNER) OAH No. 21-1470-PUA
) Agency No. P21 708 03
_____)

APPEAL DECISION

Docket Number: P21 708 03

Hearing Date: August 19, 2021

CLAIMANT APPEARANCES:

David P. Neuner

DETS APPEARANCES:

None

CASE HISTORY

Mr. Neuner appealed a January 11, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0007515814. When denying eligibility the Division noted: "You reported being laid off from your job and diagnosed with COVID-19 or experiencing symptoms on 4/10/20, however you quit your job at Walmart when you stopped attending your scheduled shifts and you did not provide medical documentation."

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 19, 2021. Mr. Neuner 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 matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of Mr. Neuner's appeal disqualified him from challenging the determination of ineligibility, and, if not, whether Mr. Neuner meets the eligibility requirements under the act.

FINDINGS OF FACT

Timeliness

On January 11, 2021 the Division issued Notice of Non-Monetary Issue Re-Determination letter # L0007515814. That letter was mailed to Mr. Neuner at his address of record. That address is not where he was living. That address is his sister-in law's home. After his PUA benefits stopped, Mr. Neuner lost his housing and did not have open, frequent access to his mail or to reliable transportation. Occasionally Mr. Neuner's wife would meet her sister, and, at those meetings, Mr. Neuner's sister-in law would deliver a stack of mail. Mr. Neuner has no clear memory of whether he received the letter, or when. He describes the period from October 2020-April 2021 as a cascade of instability that began when he stopped receiving weekly PUA benefits in September 2021. Initially electricity was cut off, then the car broke, and he and his family were evicted. Once the utilities were cut off, and while homeless, he had very limited access to the internet and contact with the Division was hard to maintain.

After issuing the Notice of Non-Monetary Issue Re-Determination on January 11, 2021 the Division continued to work on his case. On February 10, 2021 the Division interviewed his employer¹. On February 22, 2021 the Division called Mr. Neuner. They were unable to reach him and sent him a letter.² On March 5, 2021 the Division again conducted a phone interview with Walmart.³ Additionally, Monetary Adjustment Determinations were made on March 20, 2021 and April 6, 2021⁴. Mr. Neuner's credible testimony established that, while he had no memory of getting or reading the January 11, 2021 letter, he recalls getting a letter in April 2021 informing him of overpayments, and arrears adjustment. Upon getting that letter he called the Division. It was during this phone call, on April 15, 2021, that he first learned about the denial of benefits and the need to appeal. His appeal was lodged on April 15, 2021.

Merits

Mr. Neuner was a full-time employee at the Wasilla Walmart store. He began working for them on March 20, 2021. Prior to this hire he had previously worked for Walmart for about 6-7 years. Very shortly after beginning work, he got a call from a public health nurse⁵ notifying him that he had been in close contact with a person who tested positive for Covid-19. He was informed that he needed to quarantine for at least 14 days. The exposure that resulted in quarantine occurred at Walmart, during his week-long, one on one training. While he was in quarantine, he was in frequent contact with Ms. Yancy. He was initially symptom free. Toward the end of the 14-day quarantine he got very ill with symptoms. Ms. Yancy told him he should do another

¹ Exhibit 1; Page 34.

² Exhibit 1; Page 33.

³ Exhibit 1; Page 32.

⁴ Exhibit 1; Page 39.

⁵ He believes that her name was Ms. Yancy.

14-day quarantine. By the end of that second quarantine, he was feeling better. He took a Covid test, and it was negative.

After getting the negative test result, he contacted Walmart and returned to work on April 13, 2020. However, on his first day back to work he began vomiting. His team leader told him to go home. Within 3 days of being home that time, his children were also sick, and the public health nurse told him to do 14 more days of quarantine.⁶ At that time his manager suggested that he might qualify for a Leave of Absence, because the manager thought that Walmart had begun a Covid-19 exemption to the usual probationary period required for an approved medical leave of absence. Another manager disagreed and said that he didn't qualify and there was no special Covid-19 exemption. He tried to clarify this directly with Walmart but got no answer. He then contacted the company that manages Walmart's medical leave issues, directly. That company informed him that he had not worked at Walmart long enough to qualify for a medical leave of absence and therefore he was laid off. They also confirmed that Walmart did not have a Covid-19 exception to the leave of absence probation period due to Covid-19.

At no point did anyone from Walmart call to see how he was doing, or to go over his employment status. He called Walmart to talk to his manager. He got a recording and left a message requesting a call back from his manager. After not getting a call back, and still not being able to get through on their new phone system, he went to the store the store to speak to his manager. The manager wasn't available. He went back again to pick up his paycheck. He got his paycheck, was told that his manager said that he wasn't on the schedule to work and that he needed to wait until he was informed that he was on the schedule.

After Mr. Neuner was sent home due to the vomiting, he did not get a call from Walmart to go back to work.⁷ He emphatically, and credibly denies Walmart's later claim that he was called back to work on in July 2020 but refused work. Mr. Neuner looked for other employment but was unable to find any until he began working with People Ready. This tribunal does not have the date that his work through People Ready began.⁸

EXCERPTS OF RELEVANT PROVISIONS OF LAW

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

⁶ Exhibit 1: Page 26.

⁷ Exhibit 1; Pages 26 and 29.

⁸ Mr. Neuner participated in the August 19, 2021 hearing during his lunch break at work with People Ready. After an hour, and just when we got to the issue of when he began to work with People Ready, we were disconnected and not able to reestablish telephonic contact.

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.

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.

____**

(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; or

(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.

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UIPL 16-20, Change 5, 4.iii Issued by USDOL February 25, 2021

Individuals experiencing a reduction of hours or a temporary or permanent lay-off. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *“An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.”*

APPLICATION

Timeliness

When a filing is not made within the 30-day period, the claimant has the burden to establish that some circumstance beyond his control prevented the timely filing of the appeal. This tribunal finds that the claimant has met his burden. His lack of housing, and limited access to his mail created circumstances beyond his control which may have resulted in him never getting the January letter Mr. Neuner’s credible testimony established that he had no memory of getting or reading the January 11, 2021 letter. Additionally, given the ongoing actions of the Division, including a phone message, and mailing to him, it was not unreasonable of him to conclude that no final decision had yet been made. He credibly testified that he recalls getting a letter in April informing him of overpayments, and arrears adjustment. Upon getting that letter he called the Division. It was during this phone call, on April 15, 2021, that he first learned about the denial of benefits and the need to appeal. His appeal was lodged on April 15, 2021.

Merits

It is the determination of this tribunal, that Mr. Neuner was laid off from work on April 13, 2020 and that the layoff was an involuntary lay off due to Covid-19. This conclusion is supported, not only by Mr. Neuner’s credible testimony, but also by the statements provided to the Division from Walmart. The first issue is whether his employment layoff was properly related to Covid-19. The second issue is whether the layoff was voluntary or involuntary. The third issue is whether Mr. Neuner was, in fact, offered a return to work on July 1, 2021, and if so, did he voluntarily reject that offer at that time.

The April 13, 2020 layoff satisfied the eligibility requirement that “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.”⁹ Mr. Neuner was acting in accord with the ongoing medical advice provided to him by the public health nurse. He was quarantined after a confirmed exposure to an infected individual, he then had symptoms consistent with Covid-19 and followed the public nurses advise to continue to quarantine. That quarantine was not voluntary, it was at the direction of the public health nurse.

After completing that extended quarantine Mr. Neuner returned to work on April 13, 2020. He was then sent home by his team leader because he was vomiting. There is no evidence that he was encouraged by Walmart to remain at work but voluntarily chose to go home. Furthermore, after his children also exhibited symptoms, the public health nurse, again advised him to quarantine. Thus, the tribunal finds that the April 13, 2020 lay off was not due to a voluntary quit.

The Division also determined that Mr. Neuner was contacted by Walmart on July 1, 2020 and invited to return to work, and that he refused due to working conditions. There is no credible evidence to support this finding by the Division. Not only was Mr. Neuner a credible witness that he had never been contacted to return to work, but Walmart, itself, did not support that scenario.

The Division contacted Walmart to inquire about Mr. Neuner’s first and last day of work, and the nature of his termination from work. The first information from the employer was dated July 31, 2020. The preparer, Robert Wagner was an Unemployment Claims Specialist, and a third-party administrator from TALX UCM Services, Ins. He sent in a 5-page form.¹⁰ The form identified the first day of work as March 20, 2020 and the last day as April 13, 2020. In the section “Reason for Separation” it stated, “Disaster Related Separation.” Under the section “Additional Separation Information” he reported, “The separation is a result of the Covid-19 pandemic; the employer is experiencing a site closure or other business slow down.” Notably, under the section “Voluntary Quit” there were no entries. This report was issued on July 31, 2020. The employer would have included the information of the alleged July 1, 2020 re-hire in the July 31, 2020 report, had it occurred. Further information clarified that Mr. Neuner’s paystubs did not support the Division finding that his last day of work was July 1, 2020. In February the Division was able to confirm that his last paycheck was issued May 16, 2020 and it was for 2.5 hours of work. ¹¹Had he been working until July 1, 2020 there would have been a paycheck to support that claim.

⁹ The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance; 3(a) (I) (ff).

¹⁰ Exhibit 1; Pages 12-16.

¹¹ Exhibit 1; Page 34.

The Division's conclusion is based on an October 16, 2020 report from Walmart.¹² This report is from the same company as the first reporter and is issued by a Ms. Candice Anderson. This report lists the first day of work as March 20, 2020 and the last day of work as July 01, 2020. The Reason for Separation was "Voluntary Quit/Separation" and states that "The claimant voluntarily quit due to dissatisfaction with the working conditions." This report makes no mention of the "disaster related separation" identified in the July 2020 report and does not explain why this report diverges from the earlier report that "The separation is a result of the COVID-19 pandemic."

This discrepancy was noticed by the Division. A March 5, 2021 Quality Review Sheet dated weeks after the January 11, 2021 ruling¹³ noted that "ER STATES CLAIMANTS LDW 04/13/20 LAID OFF DUE TO COVID. ER HAS NOT CLAIRIFIED IF CLAIMANT WAS ON LOA OR IF HE WAS GIVEN A DEFINITE RETURN TO WORK DATE. REQUESTED MANY TIMES TO CLARIFY DATES AND WAGE INFORMATION. ER HAS PROVIDED CONTRADICTING INFORMATION. ONLY CONSISTENT IS HE WAS LAID OFF LDW 04/13/20 AND WILL USE THE LWW AS \$245.83 WHICH WAS PAID 04/18/20."¹⁴ The Naper Statement on this form is as follows: "You reported you were discharged from Walmart Associates Inc after getting COVID and sent home by the employer. After a review was completed it was determined you were laid off. Last day of work was 04/05/21."

The tribunal finds that the information in the employer's July 31, 2020 report is the more credible. It is much closer in time than the October report. Moreover, the employer never provided information to support these later claims, despite being repeatedly requested to do so. Therefore, there is no credible evidence that he was called back to work in July 2020 or refused to return to work

The information in the July 31, 2020 employer's report, and Mr. Neuner's testimony supports the finding that Mr. Neuner was involuntarily laid off on April 13, 2020 and not offered a return to work at any time thereafter

DECISION

Timeliness

It is the determination of this tribunal that Mr. Neuner's appeal was Timely.

Merits

The Division's January 11, 2021 determination that Mr. Neuner is ineligible for PUA benefits is **REVERSED**. Mr. Neuner is deemed a covered individual, entitled to PUA

¹² Exhibit 1; Pages 19-23.

¹³ Exhibit 1; Page 32; Quality Review Sheet dated March 5, 2021.

¹⁴ Capitalization and phrasing as in original.

benefits as of the week ending April 18, 2020. It is also the decision of this tribunal that Mr. Neuner remained entitled to PUA benefits until he began working with Ready People. This matter is remanded to the Division for the limited purpose of determining his start date at Ready People.

Dated: October 13, 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 13, 2021, the foregoing decision was served on David Neuner (by email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings