

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

In the Matter of )  
 )  
AARON AUSTIN ) OAH No. 21-1501-PUA  
 ) Agency No. P21 717 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 717 03

**Hearing Date:** October 4, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Aaron Austin

None

**CASE HISTORY**

The claimant, Aaron Austin, appealed a July 7, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor referred the appeal to the Office of Administrative Hearings on or about August 2, 2021. Under the agreed 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 October 4, 2021.

The claimant appeared 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: whether the lateness of the claimant's appeal disqualified him from challenging the denial, and if not, whether he meets the eligibility requirements of the Act.

**TIMELINESS OF THE APPEAL**

Under AS 23.20.340 and 8 AAC 85.151 the appeal of an agency determination or re-determination must be filed within 30 days after the determination or re-determination is made. 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. In addition, due process requires that claimants "be

provided a meaningful opportunity to understand, review, and where appropriate, challenge the department's actions.”<sup>1</sup>

The determination in this case was issued to the claimant on July 7, 2020. DETS logged in his appeal on April 23, 2021 - approximately 260 days after the 30-day appeal deadline. The July 7, 2020 notice (Letter ID L0002949397) provides no useful information regarding the basis for the denial, simply stating only that “you do not meet the [PUA] program eligibility requirements” because “you have not been impacted by COVID-19 reasons as of the week ending May 16, 2020 and are therefore not a covered individual.” (Letter ID L0002949397, Exhibit 1, p. 3.) No other information regarding DETS's denial rationale is described in the notice.

The claimant explained the delay in filing his appeal at the hearing. He testified that he had been incarcerated in 2019 and early 2020 prior to and during the onset of the COVID-19 pandemic, and that he was released from a halfway house in the early stages of the pandemic in May 2020. He applied for PUA benefits in late May of 2020. After his release he was essentially homeless and had very little ability to access the internet to view his PUA account online. DETS issued its denial notice to him in early July and sent it to him at “general delivery” in Wasilla; the claimant credibly testified that he was living in a tent in the woods near Wasilla at the time and he never received any general delivery mail in Wasilla. He eventually learned of the denial notice many months after its issuance, when he borrowed a friend's phone and viewed his PUA account online, but he could not recall exactly when that occurred. From that point forward, however, the claimant made numerous phone calls to DETS trying to determine why he had been denied; he credibly testified that he actually spent a total of over 24 hours on hold trying to speak with DETS staff. On several occasions he managed to get through to a DETS employee, and each time he was told he just needed to submit additional information in support of his claim. Through all of these efforts, the claimant was not made aware of the denial of his claim and the need to appeal until just before he filed the appeal on April 23, 2021.

The claimant in this case credibly testified that he filed his appeal as soon as he was made aware of the finality of DETS's denial and the basis for the denial. As noted above, the denial notice provides no useful information as to why his claim had been denied. The claimant went to fairly extreme lengths, given his lack of online access, to determine the status of his claim by phone with the Division. It has been noted in several Tribunal decisions, and is essentially undisputed, that during the summer and fall of 2020 DETS was unable to timely process telephonic inquiries and appeal requests received due to the overwhelming number and the limited trained staff available.

This Tribunal finds, given the claimant's credible testimony and the known historical backdrop, that the claimant's lack of online access and difficulties experienced in

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<sup>1</sup> *Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1007 (Alaska 2008); see also *Allen v. State, Dept. of Health & Social Services*, 203 P.3d 1155, 1168-70 (Alaska 2009).

communicating with the Division by telephone were “circumstances beyond his control.” Therefore, his appeal will be treated as timely.

### **FINDINGS OF FACT**

Mr. Austin established a claim for Pandemic Unemployment Assistance benefits effective the week ending May 16, 2020. The Division determined that he was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program.

Prior to his incarceration, the claimant had worked in the Fairbanks area as a carpenter and roofer. After his release from the halfway house in May 2020, he made his way to Wasilla and was hired for a construction job, but he was unable to work the job due to his homelessness, lack of transportation, and lack of tools and work gear. He returned to Fairbanks in August of 2020, and he was hired at Fairbanks Roofing where he had worked prior to his incarceration. He worked for them for a few weeks, but then he moved into a transitional housing facility, because he wanted to stop living in a tent. The housing facility required him to quarantine, however, and by the time he completed the quarantine he had lost the job. The claimant testified that the Fairbanks Roofing job likely would have lasted until the first snowfall in Fairbanks, which can occur from early September to early October. He testified that in 2021 the first snowfall arrived in the last week of September.

### **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—

(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

(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); 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).

## APPLICATION

As noted above, the basis for DETS's denial determination cannot be discerned from the agency's July 7, 2020 written notice. Nor does the DETS file of exhibits submitted for this hearing shed any light on the decision rationale. It appears likely, however, that DETS denied his claim because it found that his inability to find work did not place him within any of the CARES Act eligibility categories listed above.


As to the claimant's effort to get hired in Wasilla, DETS's decision is correct. The claimant's inability to work the Wasilla construction job was not the result of the pandemic but was instead caused by the difficult living circumstances he encountered after his release from incarceration. Although those circumstances certainly were unfortunate, a general inability to find or maintain employment for reasons not related to the pandemic does not qualify a person for PUA benefits.

However, as to the claimant's work and subsequent loss of his job in Fairbanks, the DETS denial is incorrect. The claimant found employment and worked for several weeks, but when he was required to quarantine in order to have a place to live, he lost his job. The quarantine requirement was a direct result of COVID-19, thus his loss of employment is directly tied to the pandemic. Therefore, the claimant qualifies for PUA benefits for the period he would have continued to be employed by Fairbanks Roofing. The claimant worked for Fairbanks Roofing for several weeks in August 2020, then became eligible for PUA for the period from when he lost the position due to having to quarantine, until the end of the 2020 roofing season in mid-September 2020.

## DECISION

The determination in Letter ID L0002949397 is hereby partially **REVERSED**. The claimant is eligible for PUA benefits for the week ending August 29, 2020 through the week ending September 19, 2020.

Dated: January 4, 2022,


  
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Andrew M. Lebo  
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 January 5, 2022, the foregoing decision was served on Aaron Austin (by U.S. mail & email). 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