

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

In the Matter of)
)
MARTIN BAIRD) OAH No. 21-1534-PUA
) Agency No. P21 767 03

PARTIAL APPEAL DECISION AND ORDER OF REMAND

Docket Number: P21 767 03

Hearing Date: August 31, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Martin Baird

None

CASE HISTORY

The claimant in this case, Martin Baird, appealed three April 5, 2021 determinations which denied various time segments of his claim for Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decisions were recorded in Letter IDs L0012257513, L0012259687 and L0012267566. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in August 2021.

The matter was heard in a recorded hearing on August 31, 2021. Mr. Baird testified under oath. The Division of Employment and Training Services (DETS) was not a live participant.

The issues before the ALJ are whether the claimant's appeal was timely and, if so, whether he meets the eligibility requirements of the Act.

TIMELINESS

Mr. Baird's appeal was flagged as untimely. This seems to have happened because Alaska Regulation 8 AAC 85.151 provides a 30-day window for appeal, and one phone call from Mr. Baird requesting to appeal occurred on May 6, 2021, 31 days after the redetermination decision. However, Regulation 8 AAC 85.151 provides that the appeal time limit is to be computed in accordance with Rule 6 of the Alaska Rules of Civil Procedure. Rule 6(c) provides that, for time limits computed from notices distributed by mail, "three calendar days shall be added to the prescribed period." Mr. Baird's notice was distributed by mail, and therefore the appeal deadline for him was 33 days after April 5, 2021, which would move it to May 8, 2021—which was a Saturday, so in accordance with subdivision (a) of the same rule it would move again to Monday, May 10, 2021. The May 6 appeal request was easily within this deadline.

DETS NOTICES TOO NARROW TO ENCOMPASS MAIN ELIGIBILITY ISSUE

The three DETS notices currently at issue in this appeal (Letter IDs L0012257513, L0012259687 and L0012267566) all identify the basis for denial as “you were not able and available for work.” The able and available issue is that Mr. Baird was at least nominally enrolled in university classes during the identified periods, and DETS reasoned that he could not meet the able and available requirements while enrolled.

The resolution of this issue is complex. DETS denied whole semesters in their entirety, but Mr. Baird dropped a number of classes, other classes were canceled by the university, and other classes met only in the evening. Mr. Baird probably was able and available for full-time work for much, if not all, of the periods during which he was denied.

However, DETS seems to have overlooked a much more fundamental issue with Mr. Baird’s PUA eligibility. It arises from the following facts:

1. Prior to the pandemic, Mr. Baird was working as a contract programmer in the UAF space lab. He was paid in advance for the whole contract.
2. After spring break in March 2020, UAF closed the lab and Mr. Baird could not work. He still owed UAF about 200 hours under his contract. But UAF did not require him to work those hours or to pay back any part of his grant. He lost no income under the contract.
3. Had there been no pandemic, the contract would have been completed during the summer of 2020. Beyond that, Mr. Baird hoped to be hired as an employee to continue the same work. UAF was “trying to get everyone transitioned” to regular employment. But no job had been offered for the period after the contract would have ended.

The facts outlined suggest that Mr. Baird would not meet any of the CARES Act criteria for COVID-19 impact. However, the denial notices to Mr. Baird do not encompass that issue, and the tribunal cannot take that issue up as a basis for denial unless there is a denial notice explicitly covering it. As the Alaska Supreme Court has held, in the context of public benefits, “[d]ue process requires that benefit recipients be given ‘timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend.’”¹ A notice alluding only to an able and available issue is not adequate notice of a COVID impact issue.

A notice issue of this kind can be cured by issuance of a new notice.² The case will be remanded to DETS for it to evaluate whether it wants to do so. Any new notice would be subsumed in the present appeal pursuant to AS 23.20.415(c). If DETS does not wish to issue a further notice, the case will be resolved on the more limited able and available issue.

¹ *Allen v. State, Dep’t of Health & Soc. Serv.*, 203 P.3d 1155, 1167 (Alaska 2009) (quoting prior authority).


² *Id.* at 1169 (“... if the agency wishes to pursue ... it must issue them notices ...”).

DECISION

The appeal is **TIMELY**. This matter is **REMANDED** to DETS for **15 days from the date of this order** to either (1) issue a new notice addressing the COVID-19 impact issue, with a copy to both the claimant and OAH; or (2) file a statement with OAH saying that it does not wish to contest COVID-19 impact with respect to this claimant.

If DETS takes option (1), Mr. Baird will be given a further opportunity to respond.

Dated: September 7, 2021


Christopher Kennedy
Administrative Law Judge


APPEAL RIGHTS

Because this is not a final decision in the case, there are no appeal rights at this time.

OVERPAYMENT NOTICE

Ordinarily, those who are overpaid benefits, regardless of the cause of the overpayment, must reimburse the overpayment. The ultimate resolution of this case may leave Mr. Baird with PUA receipts in excess of his entitlement. At hearing, the judge informed him that an italicized notice would be provided explaining the process for seeking a repayment waiver: *The Division has advised that claimants with an overpayment can request a waiver of recoupment by calling Benefit Payment Control at 907-465-2863, 1-888-810-6789, or emailing jnu.bpc@alaska.gov. If a waiver is not granted, separate appeal rights apply from the denial of a waiver.*

CERTIFICATE OF SERVICE

I certify that on September 7, 2021 the foregoing decision was served on Martin Baird (by mail and by email to ). A copy was emailed to the UI Support Team, the UI Technical Team, and UI Appeals Office.


Office of Administrative Hearings