

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

In the Matter of )  
 )  
MALACHI EWING ) OAH No. 21-1725-PUA  
 ) Agency No. P21 853  
 )  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 853

**Hearing Date:** September 3, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Malachi Ewing (assisted by his mother)      None

**CASE HISTORY**

The claimant, Malachi Ewing, timely appealed a June 21, 2021 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136 for the portions of his claim up to the week ending May 16, 2020 and from the week ending June 19, 2021 forward. Formal notice of the determination was given in Letter ID L0013480487, dated June 22, 2021. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in July 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 September 3, 2021. 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. Mr. Ewing testified under oath. Because he is a young man, still in high school, and the hearing appeared to make him nervous, his mother was permitted to assist him.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act during the period covered by the denial.

**FINDINGS OF FACT**

Malachi Ewing established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 4, 2020. Although initially approved and paid for all weeks, his application was subsequently redetermined to a denial for the weeks ending April 4, 2020 through May 16, 2020, and for the week ending June 19, 2021 and thereafter. There appears to be a negative balance for which DETS is seeking repayment.

Prior to the pandemic, Mr. Ewing had been working for Camp Fire USA Alaska Council in a support role. The daycare/day camp offered by Camp Fire closed in the second half of March 2020 because of COVID-19, and Mr. Ewing was laid off no later than March 30, 2020 for this reason. In 2021, a DETS claims-taker came to believe that Camp Fire continued to employ Mr. Ewing until May 20, 2020, but this was simply a misunderstanding (perhaps conflating “May” with “March”). The documentary and oral record are perfectly clear that the layoff was effective no later than the week ending April 4, 2020—as one would expect for an after-school care program in Anchorage. Mr. Ewing did have second quarter 2020 earnings from Camp Fire, but this was presumably because of the lag between working and getting a paycheck.

Mr. Ewing has recently been rehired by Camp Fire, and the same claims-taker also developed the impression that Mr. Ewing’s rehire date was June 10, 2021. Again, this was a miscommunication. It is clear that Mr. Ewing did not start work in any capacity until July 6, 2021 (when he attended training), and did not start regular employment until somewhat later still.

Accordingly, both adjustments to Mr. Ewing’s eligibility dates in Letter ID L0013480487 were based on factual misunderstandings. During the hearing, however, it became clear that Mr. Ewing had received income from a different employer, Burlington Coat Factory, in March-May 2021. This employment seems to have been interrupted in some weeks by Covid exposures, but Mr. Ewing did receive some pay. He does not believe he entered it in the PUA portal. He has been instructed that he should do so.

### **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—

\* \* \*

(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; . . .

(B) does not include—

(i) an individual who has the ability to telework with pay; . . . .

### **UIPL 16-20, Change 5 Issued by USDOL February 25, 2021**

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.”* [italics in original]

### **APPLICATION**

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is unemployed because one of a list of reasons related to the COVID-19 pandemic and is not eligible for unemployment benefits under any State of Federal program. It appears to be undisputed that Mr. Ewing did not have pre-layoff employment that would qualify him for unemployment compensation in 2020-21.

The record is clear that Mr. Ewing was laid off prior to, or at the beginning of, the week ending April 4, 2020. The layoff was directly linked to COVID-19, and it confers PUA eligibility. Assuming he was not disqualified for other reasons, Mr. Ewing remained eligible for PUA based on this layoff until he was rehired by Camp Fire USA, which occurred no sooner than July 2021. Accordingly, both adjustments in Letter ID L0013480487 were erroneous.

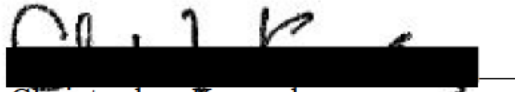
Letter ID L0013480487 did not address the impact of Mr. Ewing’s Burlington Coat Factory earnings on his PUA benefits. Mr. Ewing has been instructed to report those earnings.

### **DECISION**

The determination issued on June 22, 2021 (Letter ID L0013480487) is **REVERSED**. *The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending April 4, 2020. Eligibility did not terminate in the week ending June 19, 2021.* This decision does not preclude DETS from (1) investigating and

determining that benefits should terminate at a later point in the summer of 2021, when Mr. Ewing resumed work for Camp Fire USA, and (2) requiring Mr. Ewing to report his earnings from Burlington Coat Factory and recalculating his benefit as appropriate based on those earnings.

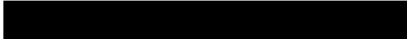
Dated: September 7, 2021


  
Christopher Kennedy  
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 September 7, 2021 the foregoing decision was served on Malachi Ewing (by mail and by email to ). A copy has been emailed to the UI Support Team, UI Technical Team, and the UI Appeals Office.

  
Office of Administrative Hearings