

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

In the Matter of)
)
SANDRA WRIGHT) OAH No. 21-1726-PUA
) Agency No. P21 858 03
_____)

APPEAL DECISION

Docket Number: P21 858 03

Hearing Date: October 12, 2021

CLAIMANT APPEARANCES:

Sandra Wright

DETS APPEARANCES:

None

CASE HISTORY

This matter arises because Ms. Wright appealed a March 16, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0010274911. When denying eligibility, the Division of Employment and Training Services (Division) stated that Ms. Wright did not meet the program eligibility requirements beginning the week ending June 27, 2020. The Division’s “Decision Details” section stated “You were impacted on March 19, 2020 by being advised to quarantine by you(sic) medical on 3/24/20. You voluntarily quit when you notified your employer that you did not want to deal with guests in person and did not make reasonable attempts prior to quitting.” Under the Conclusions of Facts section in the letter, the Division stated that they had determined that Ms. Wright was not impacted by Covid-19 beginning March 15, 2020 and that she was not a covered individual for any PUA benefits.¹

Under a prior ruling in a related matter,² a remand to the Division ruled that Ms. Wright was eligible for PUA benefits “beginning the week ending March 21, 2020 and continuing through the week ending June 20, 2020.” That decision was not appealed. The matter was remanded to the Division for the limited purpose of evaluating “whether the claimant was available for work after June 20, 2020 and was otherwise eligible for PUA benefits after June 20, 2020.”

Ms. Wright entered an appeal by telephone on June 22, 2021, three months after the decision was made. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in August 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 October 12, 2021. Ms. Wright testified telephonically and under oath. At its own election, the Division provided only written materials for the hearing and was not a live participant. The documents provided by the

¹. Exhibit 1; Page 3.

². Appeal Decision and Order of Remand, *In re Sandra Wright*, OAH No. 21-0073-PUA and Agency No. P21007 (March 2, 2021).

Division are identified as Exhibit 1 and were admitted into evidence. Ms. Wright also provided pre-hearing documents. Those were lodged on August 13, 2021 and they are identified and admitted as Exhibit A. On October 20, 2021 Ms. Wright provided additional documents, those are identified and admitted as Exhibit B. The record closed on October 22, 2021.

The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of Ms. Wright's appeal disqualified her from challenging the determination of ineligibility, and, if not, whether Ms. Wright meets the eligibility requirements under the act.

FINDINGS OF FACT

Timeliness

Ms. Wright received the Office of Administrative Hearings' March 2, 2021 Decision and Remand Order. She does not recall receiving the Division's March 16 Notice of Non-Monetary Issue Re-Determination. She acknowledges that the mailing address used to mail the March 16 notice was correct. She simply has no memory of getting that Notice.

On May 18, 2021 Ms. Wright contacted the Division to find out when she might get a decision from the March 2, 2021 remand. She was informed by Vanessa that the claim had already been denied and that she could file an appeal.³ Later that same day Ms. Wright filed an appeal via email.⁴ She was asked to provide additional information. She provided that information on June 14, 2021.⁵ Exhibit 1; Page 41 reflects that her appeal had been received by June 23, 2021.

Merits

The tribunal's findings are based on the information in Exhibits 1, A and B, and Ms. Wright's credible testimony at the October 12, 2021 hearing⁶. The Division did not have any contact with Ms. Wright between March 2, 2021, when the ALJ issued the remand order in the first appeal, and March 16, 2021 when the Division denied her claim for the remanded period. The Division's Exhibit 1 also did not reflect any additional contact or information with My Place Alaska or its agents prior to issuing the March 16, 2021 determination.

Ms. Wright began to seek employment after she was laid off from her front desk job at My Place Alaska, a hotel in Ketchikan, in March 2020. Ms. Wright was not offered work at My Place Alaska at any time after being laid off. Throughout the summer of 2020, she looked for front desk or similar work at My Place Alaska and other island hotels. She was not able to find work. Places were either not opened, or they were open but not hiring.

In the fall of 2020, Ms. Wright continued to look for work, but no hotels or hospitality businesses were advertising for employees and no place was hiring or, if they were hiring, they hired someone else. In late fall 2020 Ms. Wright heard that Tongass, a furniture store,

⁵ Exhibit 1; Page 26. May 18 email from Ms. Wright to Appeals, Anchorage (DOL sponsored).

⁶ *Id.*

⁷ Exhibit 1; Page 23. Her email was addressed to appeals@alaska.gov (DOL sponsored).

⁸.

might be hiring sales personnel. So, even though she had no experience in sales, she went there to check it out. A friend, Terry, was a manager. Terry reported that Tongass was not hiring, but she would try to get Ms. Wright on if they did hire.⁷ Ms. Wright checked in with Terry regularly and eventually got hired as a salesperson. She was finally offered that job on August 2, 2021 and she began work on August 4, 2021. Her earnings at Tongass are similar to what she was making at My Place Alaska in March 2020.

Throughout 2020 and 2021 Ms. Wright's focus was to be rehired by My Place Alaska. In 2020, she had been told by the manager that she was eligible for re-hire. Throughout the summer of 2020 she was not contacted by anyone from My Place Alaska for re-hire. In June 2021 she reached Chris, the general manager by text, he directed Ms. Wright to the acting assistant manager, Amanda, with the promise that he would let Amanda know that Ms. Wright was eligible for re-hire.⁸

As the summer 2021 tourist season opened Ms. Wright repeatedly tried to reach Amanda, by phone text and in person. She was told by hotel personnel that Amanda knew she was contacting them for work, and that Amanda would call her when there was work. However, Ms. Wright was not contacted by Amanda, or called back to work by anyone at My Place Alaska in 2021.⁹

Ms. Wright was in Ketchikan from June 20, 2020 through August 4, 2021¹⁰ when she began working at Tongass furniture store. Throughout that period the only times she was unavailable to work, had work been offered or located, was between November 21, 2020 and December 4, 2020, and March 31, 2021 to April 14, 2021 when Ms. Wright was self-isolating after having been exposed to Covid-19 through her daughter, and advised by the public health department to self-isolate.¹¹

APPLICABLE LAW

Timeliness

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 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,

⁹. She was offered a job at Tongass on August 2, 2021 and started on August 4, 2021.

¹⁰ Exhibit A.

¹¹ Exhibit B; Page 1.

¹² Ms. Wright was off island from September 9, 2021 to September 16, 2021.

¹³ Exhibit B. Ms. Wright's adult daughter tested positive with Covid-19 on November 21, 2020 and March 31, 2021. Each time the public health nurse provided the daughter, Lacey, written instructions to share with family or friends exposed to Covid-19 by Lacey. The advice was to self-isolate for 10-14 days depending on the presence and severity of symptoms.

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.

Merits

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—

____**__**

(bb) a member of the individual's household has been diagnosed with COVID-19;

(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; or

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; _____

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

4. Guidance

a. Expanded list of COVID-19 related reasons approved by the Department---

____**__**

iii. Individuals experiencing a reduction of hours or a temporary or permanent layoff. 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.”

This new COVID-19 related reason expands eligibility beyond the current provision of item (jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act, which is limited to situations where the individual’s place of employment is closed. Under this new COVID-19 related reason, if an individual is laid off because the place of employment is partially closed (either permanently or temporarily) or the individual has experienced a reduction in hours, the individual may now self-certify eligibility.

Generally, individuals in covered employment who are laid off, are experiencing a reduction in hours, or are working part-time as a result of partial business closure would qualify for regular UC (or PEUC or EB) and therefore would not be eligible for PUA. However, such individuals may not be eligible for regular UC (or PEUC or EB) because, for example, they lack sufficient wages to qualify, have a previous disqualification, or have exhausted regular UC, PEUC, and EB. This expanded COVID-19 related reason establishes a circumstance under which they may self-certify eligibility for PUA.

APPLICATION

Timeliness

Ms. Wright’s explanation of why she did not file an appeal within 30 days of when the Division’s March 16 Notice of Non-Monetary Issue Re-Determination was issued is credible. Her report is supported by Exhibit 1, Pages 23-26, 41. It is the finding of this tribunal that Ms. Wright first learned of the ruling against her claim on May 18, 2021. She immediately emailed her intent to appeal and followed up when asked for more information. She took reasonable steps to file timely notice and her clear notice of intent to appeal was conveyed within 30 days of May 18, 2021 when she first had notice of the March 16 decision.

Merits

The scope of the issue before the tribunal is whether Ms. Wright took, or failed to take, any action between the week ending June 20, 2020 and the date of her reemployment on August 4, 2021 that would have disqualified her as a ‘covered individual’ pursuant to The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance.

It is the determination of this tribunal that Ms. Wright was able and available for work throughout the relevant timeframe except for the dates in November 2020 and March 2021 when she was self-isolating at the direction of the department of public health¹². Being unavailable for work in that situation does not exclude a claimant from PUA benefits¹³.

It is also the finding of this tribunal that Ms. Wright actively sought work and did not turn down any offer of employment between the dates of June 20, 2020 and August 4, 2021. As

¹⁴. Exhibit B.

¹⁵. The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance; 3(A) (I)(ff).

was determined in the prior appeal, the evidence does not support the Division's original view that she had voluntarily quit her job in March 2020 and then refused offers to return to work. Not only has that factual issue already been determined in her favor in the March 2, 2021 ruling, but the evidence in Exhibit A further supports her claim that she was laid off in conjunction with medical advice to isolate after an exposure.

Exhibit A and B show an ongoing communication between Ms. Wright and Chris from My Place Alaska. The content and tone of the texts in Exhibit A does not support a finding that Ms. Wright had been offered employment after June 20, 2020 and turned it down. Rather, Chris confirmed that she had been laid off in March 2020 when the hotel laid off other staff and was maintaining a skeletal crew. In these texts Chris also confirmed that the hotel would hire her if there was an opening, but even as late as June 2021, he was not sure that they would be hiring more than "a few" people. In Exhibit B, on the cover letter Ms. Wright reports that she continued throughout the summer of 2021 to get called back to My Place Alaska.¹⁴ Moreover, the hospitality business in Ketchikan was virtually closed due to Covid-19 related cruise and other travel restrictions.¹⁵

Ms. Wright finally found work on August 4, 2021. Since the wages were similar to what she had been earning at My Place Alaska, that is a proper date to terminate eligibility.

DECISION

Timeliness

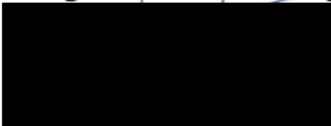
Ms. Wright's appeal is timely.

Merits

The Divisions Determination issued on March 16, 2021¹⁶ is **REVERSED**. Ms. Wright is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending June 20, 2020 and continuing through the week ending August 7, 2021.

The claimant has already been determined to be eligible for PUA benefits from the week ending March 21, 2020 continuing through the week ending June 20, 2020. That decision is not changed by this ruling.

Dated: November 3, 2021


Karla F. Huntington
Administrative Law Judge

¹⁶ "I kept in contact with Chris the GM at My Place, most the messages I left went unanswered, as recently as June 22nd, July 13th and July 23rd text message to Chris at 2:21pm and phone call to assistant manager Amanda at hotel 220-9201 at 2:56pm mailbox full." Exhibit B; Page 1.

¹⁷. The first large cruise ship to dock in Ketchikan in all of 2020 and 2021 landed on July 9, 2021.

¹⁸. Letter ID L0010274911

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 November 3, 2021, the foregoing decision was served on Sandra Wright (by mail and email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

Office of Administrative Hearings