

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

In the Matter of )  
 )  
THOMAS BECKER ) OAH No. 21-1731-PUA  
 ) Agency No. P21 862 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 862 03

**Hearing Date:** October 12, 2021  
November 10, 2021

**CLAIMANT APPEARANCES:**

Thomas Becker

**DETS APPEARANCES:**

None

**CASE HISTORY**

Mr. Becker appealed a May 19, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0013119732. When denying eligibility, the Division of Employment and Training Services (Division) noted that “you were not able and available for work for reasons unrelated to COVID-19 as of the week ending March 7, 2020”.

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 October 12, 2021. Mr. Becker testified telephonically and under oath. On October 14, 2021 an order was issued holding the record open until October 25, 2021. On October 28, 2021 an order was issued reopening the record to allow testimony from Mr. Becker’s witness, Mr. Drew Root. Mr. Root testified, telephonically and under oath, on November 10, 2021.

At its own election, the Division provided only written materials for the hearing and was not a live participant. The material provided by the Division is identified as Exhibit 1 and has been admitted into evidence.

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

## FINDINGS OF FACT

### Timeliness

The Notice of Non-Monetary Issue Determination was issued May 19, 2021. The Division identified the appeal being due June 18, 2021 although, as will be seen, it was not due until June 21. Mr. Becker's appeal was filed on June 23, 2021. Mr. Becker has cognitive issues resulting from repeat head injuries<sup>1</sup>. These have a negative impact on his ability to keep track of days and times<sup>2</sup>. Mr. Becker gets his mail at a P.O Box some distance from his home. His brother brings him his mail. Mr. Becker does not recall exactly when the Notice arrived, but he acknowledges that he received it and saw it sometime in May or June of 2021. Mr. Becker cannot identify a particular reason he was late in filing the appeal. He was preoccupied easily distracted during May and June due to worries because his adult son had Covid-19. Mr. Becker was also confused by the prior exchanges of documents between himself and the Division and thought that he had given them what they needed. On June 23, 2021 he called then to find out what else he needed to do. When he called them, they explained that he had to file an appeal and they helped him to do so.

### Merits

Mr. Becker receives Social Security Disability Insurance (SSDI) benefits. The injuries mentioned above also limit what work he can physically do. He is not able to lift more than 50 pounds, and he must take frequent and long breaks due to pain and strength issues. He can only accept work that is flexible so that he can take breaks as needed. Examples of work he can do, if given enough time to take breaks, is construction work, car repair and handyman activities.

Under the SSDI program he can supplement his income up to \$900.00 a month. In 2019 he supplemented his income by doing odd jobs. Examples of these include clearing clutter out of homes, running errands for people, and snow removal. Over the course of 2019 he earned approximately \$2,000.00. In January and February of 2020, he continued to do odd jobs when hired. The pattern and frequency of work that first part of 2020 was similar to his work pattern in 2019. He specifically recalls being hired to tune a car, do brake work on a car, change out tires, and do snow removal. He billed those jobs at \$20.00 an hour. He was always paid in cash and did not have receipts.

In March 2020 he was hired to work on a construction project. When that position fell through due to Covid -19, he tried to find odd jobs again, but people were not hiring, and he was not getting called to do odd jobs.

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<sup>1</sup>. As a result of significant injury, Mr. Becker has had a series of metal rods and plates implanted in his spine and head. He experiences noticeable difficulties tracing time, and he has some limitation on participating in physical labor.

<sup>2</sup>. The tribunal observes that during the evidentiary hearing Mr. Becker was forthright and candid and making a good faith effort to convey accurate dates and times. However, he regularly had difficulty doing so. Because of that disability, to the extent that Mr. Becker and Mr. Root's testimony differs as to times and details, Mr. Root is found to be the more reliable witness.

Mr. Becker provided the Division with a letter from Dr. Wade Erickson<sup>3</sup>. That letter outlined Mr. Becker's physical limitations for work, and cleared him for work, so long as it followed those parameters.

In early March of 2020 Mr. Becker was hired by Drew Root to work for Mr. Root's business DHS. Mr. Root is a longtime friend. Mr. Root owned and operated DHS home services. This was a licensed home remodel and construction business. DHS has been in business since 2010. Mr. Root's credible testimony established that Mr. Becker had worked for Mr. Root as a day contract laborer for 2-3 days in the summer of 2019 and then was hired to be an employee in March 2020...The 2019 job was a roofing job that Mr. Root did with Mr. Becker's assistance. During that roofing job Mr. Root observed that Mr. Becker could do all required tasks without exceeding the 50-pound lifting limit. Mr. Becker was paid \$15.00 an hour for that job; payment was in cash.

In early March 2020 Mr. Root entered into an agreement to do remodeling work with an old client who was a realtor in Wasilla. This work included demolition, fire repair, and remodeling on multiple buildings. That work was set to begin the week of March 22, 2020. On or about March 10 Mr. Root called Mr. Becker and hired him to work on that job. Mr. Becker was to begin work the week of March 22, 2020. Initially he was going to do demolition work, and then stay on staff for the rest of the project. The remodel portion of the project was expected to take at least 2 months. Mr. Root confirmed that Mr. Becker's status would have been as an employee of DHS.

Mr. Becker was going to be paid \$20.00 hour. The expectation was that he would work at least 4-5 hours a day. Mr. Root then rescinded the job offer when the Covid-19 closures occurred and shut down the project. Mr. Root testified that the work Mr. Becker was hired to do fell within his abilities since he could do the work without lifting more than 50 pounds and the job site was flexible so Mr. Becker could take breaks as medically needed.

Mr. Root testified that the only reason that Mr. Becker did not begin work on that project was that the project was cancelled due to Covid-19. Mr. Root's business continued to be greatly reduced or shut down and he did not offer Mr. Becker any other work in 2020 or in 2021.

Mr. Root also testified about the information in his July 27, 2020 email to DETS<sup>4</sup>. He clarified that this planned expansion into landscaping was separate from the demolition and remodel job that Mr. Becker was scheduled to start the week of March 22, 2020. The landscaping expansion did not occur due to the reasons stated in his letter to DETS. He also confirmed that he intended Mr. Becker to remain an employee of DHS and move into working in the landscaping section once the remodel and demolition job was completed.

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<sup>3</sup>. Exhibit 1; Page 10. Written May 13, 2021 and provided to the Divisions on May 18, 2021 per Exhibit 1: Page 20.

<sup>4</sup>. Exhibit 1; Page 15.

## EXCERPTS OF RELEVANT PROVISIONS OF LAW

### 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—

. . . .

(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; . . .

### UIPL16-20 Attachment 1. Issued by USDOL April 2, 2020

*(g) 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. For example:*

\* \* \*

An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.

### UIPL 16-20 Issued by USDOL April 5, 2020

C (1) For purposes of PUA coverage, an individual “lacking sufficient work history” means an individual (1) with a recent attachment to the labor force (2) who does

not have sufficient wages in covered employment during the last 18 months to establish a claim under regular UC, and (3) who became unemployed or partially unemployed because of one of the COVID-19 related reasons identified under Section 2102. Demonstration of a recent attachment to the labor force for PUA coverage purposes also includes individuals who had a bona fide offer to start working on a specific date and were unable to start due to one of the COVID-19 related reasons identified under Section 2102.

C(1)(g) 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. For example: • An individual is unable to reach his or her job because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of the coronavirus or the employer has closed the place of employment. • An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.

## **APPLICATION**

### **Timeliness**

This tribunal finds that Mr. Becker's late filing was in good faith, caused by cognitive issues beyond his control. Pursuant to 8 AAC 85.151(b), the time calculation of Alaska Civil Rule 6(a) applies. Thus, Mr. Becker's late appeal was at most 2 days late which is a reasonable period and did not unduly disadvantage the Division.

### **Merits**

The Division's stated concern with Mr. Becker's eligibility was set out in a note on May 18, 2021. The note states:

CLMT sent doctors release showing clmt is limited to no lifting over 50 lbs.  
Clmts work history shows laborer work with potential job offer being laborer work.

Doctor note would show that clmt would not be able to perform the landscaping work that was offered in 2020"<sup>5</sup>

The documentary and testimonial evidence from the October 12 and November 10, 2021 evidentiary hearings resolves the above concerns in Mr. Becker's favor. To establish that Mr. Becker was eligible to be a covered individual under section (gg) of the Alaska Cares Act of 2020, the facts have to support a finding that he had been attached to the labor force at the time that Covid-19 factors resulted in him being laid off or fired from a job. It has been determined that a person can prove that they were attached to the labor market, even if they were not actually working at the time of the Covid-19 event, if they had been given, and accepted a firm offer to begin employment

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<sup>5</sup>. Exhibit 1: Page 17.

at a future, set time.<sup>6</sup> However, if the person was only given a contingent offer, subject to future finalization, then, that hope of a future job does not establish the kind of attachment to the labor market required by the Cares Act.

Mr. Root's testimony establishes that Mr. Becker had been hired to begin work the week of March 22, 2020 but that the offer was later rescinded by his employer due to covid-19's impact on the employer's business. Mr. Root's testimony established that the offer was a firm offer, with a start date and wages set. It had been Mr. Root's pre-Covid-19 intent to have Mr. Becker work for him for at least 2 months on the pending project. Mr. Root also intended to expand his business into the Mat-Su valley and do landscaping and retainer wall work. Mr. Root testified that he intended Mr. Becker to remain employed, after the first project was completed, and to then work in the landscaping section.

The Division was also concerned that Mr. Becker could not be deemed able and available since he had ongoing medical condition that precluded him from lifting over 50 pounds and he needed to be able to take frequent breaks while at work. The Division did not provide any factual support for its conclusion that a person could not landscape (or do other manual labor) with a 50-pound weight limit or the need for additional breaks.

Both Mr. Becker and Mr. Root testified that Mr. Becker could do the work he was hired to do. Mr. Root testified to working with Mr. Becker on a roofing job in 2019. He testified that Mr. Becker was able to do that work without having to exceed the 50-pound limit. Mr. Root testified that the work he was hired to do was also within the 50-pound weight limit. Both Mr. Becker and Mr. Root testified that Mr. Becker would be able to take breaks as and when needed at the construction job that he had been hired to do.

This tribunal is also making a factual finding that Mr. Root, under oath, certified that Mr. Becker had worked for him in 2019. To the extent that Mr. Becker does not otherwise have documentation to satisfy the requirements of the Continued Assistance Act, Public Law (Pub. L) 116-26, Mr. Root's sworn testimony on November 10, 2021 should satisfy the requirement to show an attachment to the workplace in 2019. But for Covid 19 closing the job for which he had been hired, Mr. Becker would have begun working the week of March 22, 2020. Mr. Becker testified that he has been unable to obtain replacement work and Mr. Root confirmed that he has not been able to offer Mr. Becker a job in 2020 or 2021. However, based on the descriptions of the work Mr. Becker would have been doing for Mr. Root, the jobs were largely outdoors and there was no indication they would last into the winter months. This tribunal finds that, even if Covid 19 had not happened, the work with Mr. Root would have finished by the end of November 2020.

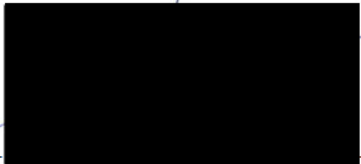
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<sup>6</sup>. UIPL 16-20 Attachment 1. Issued by USDOL April 2, 2020; UIPL 16-20 Issued by USDOL April 5, 2020.

## DECISION

It is the determination of this tribunal that Mr. Becker's situation fits the definition of a covered individual pursuant to The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance. The Division's determination set forth in Letter ID L0013119732 is **REVERSED**. Mr. Becker is deemed to be eligible for PUA benefits beginning the week ending March 28, 2020 and continuing until the week ending December 5, 2020.

Dated: November 22, 2021,

  
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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.

## NOTICE REGARDING POSSIBLE WAIVER OF REPAYMENT BENEFITS

If the Division continues to seek recovery of previously paid benefits after this decision Mr. Becker can apply for a waiver from repayment. No waiver will be granted if he does not seek it. If a waiver is sought but not granted, Mr. Becker must be given a separate appeal hearing on that issue if he requests. This decision will affect repayment of previously approved benefits. The Division has advised the OAH that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available Mr. Becker can call the BPC at 907-465-2863, 1-888-810-6789, or email to [jnu.bpc@alaska.gov](mailto:jnu.bpc@alaska.gov).

## CERTIFICATE OF SERVICE

I certify that on November 22, the foregoing decision was served on Thomas Becker (by mail & email). A 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