

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

In the Matter of)
)
TIMOTHY JOHNSTON) OAH No. 21-1798-PUA
) Agency No. P21 888
_____)

APPEAL DECISION

Docket Number: P21 888

Hearing Date: September 28, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Timothy Johnston

None

CASE HISTORY

The claimant in this case, Timothy Johnston, submitted an appeal of a June 7, 2021 determination that denied him Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was noticed in Letter ID L0013299324. 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 28, 2021. Mr. Johnston, who was a cooperative and pleasant witness, 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 issue before the ALJ is whether the claimant meets the eligibility requirements of the Act, but only as to weeks ending in 2021. DETS concedes eligibility for weeks ending in 2020.

FINDINGS OF FACT

Kenai Peninsula resident Timothy Johnston established a claim for PUA benefits effective the week ending March 21, 2020. After paying benefits well in to 2021, the Division eventually determined that he was not eligible for PUA benefits after the week ending December 26, 2020 because he was not impacted by COVID-19 in a manner that made him a covered individual under the program.

Mr. Johnston is a former engineer and technical writer who moved to Alaska to pursue his dream in April of 2019. He did not work for most of 2019, as he was concentrating

on getting established in the new location. In the ensuing winter, he began doing some snow plowing and chimney sweeping gigs. He also recalls being offered part-time jobs with Louie’s Restaurant and The Moose Is Loose Bakery just before the pandemic restrictions were imposed. The Moose Is Loose offer accounted for three-quarter time, he recalls. He says the jobs did not materialize due to the restrictions.

These offers were apparently made orally. In Mr. Johnston’s recollection, he had an offer from the former owners of The Moose Is Loose, and when Covid arrived those owners closed the bakery and—since they were elderly—decided to stay closed and sell out. He says the new owners, from Girdwood, did not renew the offer. But this does not fit with what actually happened with The Moose Is Loose, whose former owners famously closed it in 2019, not 2020. They later sold to the Girdwood buyers prior to the arrival of Covid restrictions. Thus, Mr. Johnston must be mis-remembering when he attributes to Covid the fact that he did not go to work for the former owners. That leaves the Louie’s offer, which, based on the testimony, involved quarter-time work or less. Any offer from Louie’s was sufficiently casual and insignificant that Mr. Johnston forgot to mention it when he described the basis for his PUA claim in a carefully-written, detailed letter dated June 1, 2020. Even though Louie’s is open and active now, Mr. Johnston did not offer any testimony to support a finding that his work for Louie’s would have been significant or lasting, and I am not able to make such a finding.

Mr. Johnston also reports that the new snow plowing and chimney sweeping business dropped off due to lower customer demand when the pandemic began. The snow plowing business picked up again in the following winter to the extent that snow arrived. Any reduction in income from this is due to lack of snow, not the pandemic. It does not appear that Mr. Johnston has tried to resume his chimney sweeping work.

With this background, DETS has decided that Mr. Johnston had a Covid-related impact to his employment through the end of 2020. It has not been able to find a causal connection to his unemployment in 2021, and neither can I.

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—

(l) 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; . . .

* * *

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; . . . [italics added]

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k. The individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

■ The Secretary has determined that, in addition to individuals who qualify for benefits under the other criteria described above, an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities. . . .

APPLICATION

Mr. Johnston’s claim for additional benefits, beyond the end of 2020, cannot be sustained. For 2021, no causal connection was established between any reduced independent contractor work volume and COVID-19. The Moose Is Loose offer must have occurred in 2019, long before the pandemic. As for the Louie’s job offer, I am not able to find that, if such an offer was made, it was for an ongoing position that would have persisted into 2021. In circumstances where the 2021 economic difficulties or lack of work is not as a result of Covid, the CARES Act does not provide benefits.

Mr. Johnston has been asked to repay 2021 benefits in the amount of \$9526. *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. The form for requesting a waiver is here: [https://labor.alaska.gov/unemployment/documents/Overpayment Waiver Application.pdf](https://labor.alaska.gov/unemployment/documents/Overpayment%20Waiver%20Application.pdf). If a waiver is not granted, separate appeal rights apply from the denial of a waiver.*

DECISION

The determination made on June 7, 2021 (noticed in Letter ID L0013299324) is **AFFIRMED**.

Dated: September 28, 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 29, 2021 the foregoing decision was served on Timothy Johnston (by mail and by email to ). A copy was emailed to the UI Support Team, UI Technical Team, and UI Appeals Office.


Office of Administrative Hearings