

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

In the Matter of )  
)  
JAMISON DAVIS ) OAH No. 21-1822-PUA  
\_\_\_\_\_ ) Agency No. P21 904 03

**APPEAL DECISION**

**Docket Number:** P21 904 03

**Hearing Date:** October 11, 2021

**CLAIMANT APPEARANCES:**

Jamison Davis

**DETS APPEARANCES:**

None

**CASE HISTORY**

The claimant, Jamison Davis filed a late appeal of a determination (Letter ID: L0007171010) issued December 15, 2020 by the Division of Employment and Training Services (DETS) which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor referred the appeal to the Office of Administrative Hearings on September 1, 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 October 11, 2021. Mr. Davis appeared telephonically from North Pole, Alaska, and testified under oath. His fiancée, Renae Sanders, also testified under oath. The record remained open until close of business October 12, 2021 to allow Mr. Davis to submit additional documents. Although notified of the hearing the DETS did not appear or make a representative available by telephone; it elected to rely on the documents it submitted, which were admitted without objection as Exhibit 1.

The issues before the ALJ are whether the appeal is disqualified by the delay in filing, and if not, whether the claimant meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

Jamison Davis established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 4, 2020. The DETS determined that he was not eligible for PUA benefits because “there were no COVID-19 mandates that prevented [him] from working.” The determination was mailed to Mr. Davis on December 15, 2020. On January 14, 2021, the last day of the appeal period, Mr. Davis wrote an email to the DETS stating he wanted to appeal and explaining his reasons. The email was mailed

from his fiancée’s account, which was not “associated” with his account, so it was not recognized. As a result, no appeal was processed by the DETS until July 14, 2021.

Mr. Jamison Davis is a small property owner who rents out his property and manages all the repair and upkeep. He has two “dry cabins” (one is now plumbed) and one with “infrastructure”, all about 1 mile from the Fort Wainwright gates in North Pole, Alaska. In 2020, his cabins were rented to two men who had jobs as interior carpenters, vinyl siding installers, and painters, who paid rent of \$500/month. In return, he supplied snow plowing and driveway gravel, upkeep, the Toyo stove and generator, septic, a wood stove and fuel. Mr. Davis did all the upkeep (he had been working on a roof the day of the hearing).

In addition to the cabins, Mr. Davis had a proper three-bedroom house he rented for \$1450/month. Here also he did all the upkeep, plowing, and lawn maintenance for the house. The house was empty in March 2020, when the tenant moved out without notice. He testified that from April through August, he had no income at all.

Mr. Davis and his fiancée have 2 sons with autism, and 3 daughters, one with learning disabilities, and one that is just beginning school. The sons attend a day program that closed when public schools were closed March 13, 2020, as well as speech therapy once weekly. This also closed, although eventually it began an online program. They did not resume going to therapy until July 6, 2021.

Mr. Davis testified that his two cabin tenants were thrown out of work by the COVID-19 closures. He testified that as a result, they were unable to pay rent. He did not evict them as they were “good guys,” but he lost the income they produced. He testified that he tried hard to find a tenant for the house, but that people calling said it was “too far out” from Fairbanks. It was not until sometime in October he was able to get a tenant for the house, but it was rented at a reduced rate until the roommate arrived. Yet, he still had to do the work to maintain the properties, although the cabin renters agreed to do their own snow plowing, given his forbearance on the rent.

Ms. Sanders testified credibly to Mr. Davis’s tax returns, which she was able to retrieve from computer files. She testified that he filed a Schedule C in 2019 reflecting payment to himself as a Form 1099 worker, with \$18,000 in income, but in 2020 his income was only \$4,000.

### **EXCERPTS OF RELEVANT PROVISIONS OF LAW**

#### **The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance**

(a) DEFINITIONS.—In this section:

(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—
    - ...
    - (dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
      - ...
    - (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; or
  - (II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (I); and
- (B) does not include—
  - (i) an individual who has the ability to telework with pay; or
  - (ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

**Unemployment Insurance Program Letter No. 16-20, change 1**, issued by the Secretary of Labor on April 27, 2020, added eligibility provisions under Section 2102(a)(3)(A)(ii)(I)(kk): An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19 reasons listed above, including an independent contractor who experiences a “significant diminution of work” as a result of COVID-19.

**AS 23.30.340. Determination of claims.**

- (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.

## **APPLICATION**

### **Timeliness.**

I find that the disassociation of the email requesting an appeal within the DETS processing system was “circumstances beyond the claimant’s control.” I find that Mr. Davis indeed satisfied the requirements of filing an appeal on December 14, 2020, and that his appeal is timely.

### **Merits.**


I find that Mr. Davis was self-employed. He testified he has no other income producing activity (other than public benefits like the permanent fund dividend) and that he relies on his income from his rentals. He testified he built the house himself and that he performs a considerable amount of work to maintain the properties. In addition, he does occasional building maintenance for other properties. He spends 15 to 20 hours a week on average on his own property, but sometimes more, doing such work. He testified that he continued to do work, but that he earned nothing for it as he could not collect rent. He attributed his loss to the COVID-19 public health emergency because his cabin renters lost their jobs when their spring employment ceased and they were ineligible for unemployment compensation. I find that Mr. Davis suffered a significant diminishment of his income from his self-employment because he could not get paid for his work. I conclude that, while the lack of income from the house cannot be attributed to the COVID-19 public health emergency, the loss of cabin rental income can be attributed to the impact of COVID-19. I conclude that Mr. Davis was eligible under Section 2102(a)(3)(A)(ii)(I)(kk) as a self-employed independent contractor who suffered a significant diminution in paid work from the week ending April 4, 2020 through the week ending March 27, 2021, when the house was finally rented at full rate and the cabin renters could be expected to pay some rent.

Mr. Davis testified that his school-aged children attended, and continue to attend, school online through Denali PEAK, which is a statewide correspondence school program operated by the Denali Borough School District. It is not school closures that affected his ability to work, he claims, but closure of “facility care” – the A Hand Up Behavioral Therapy for his sons and the speech therapy. They attended four days a week for at least eight hours a week, plus attendance at speech therapy. However, I cannot find, based on the testimony and evidence presented that the facility care, however necessary to the children’s welfare and development, was necessary for Mr. Davis to work. Instead, his testimony is that when they are attending therapy, he has to go with them. Therefore, I find he is not eligible under Section 2102(a)(3)(A)(ii)(I)(dd).

## DECISION

The determination of December 15, 2020, (Letter ID: L0007171010), is REVERSED. The case is REMANDED to the DETS for calculation of benefits in line with this decision.

Dated: October 18, 2021,


  
Kris Knudsen  
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 October 19, 2021, the foregoing decision was served on Jamison Davis (by mail/email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

  
Office of Administrative Hearings