

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

In the Matter of )  
 )  
TYLA CASTRO ) OAH No. 21-1825-PUA  
 ) Agency No. P21 907 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 907 03

**Hearing Date:** October 11, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Tyla Castro

None

**CASE HISTORY**

The claimant, Tyla Castro, filed a late appeal of a February 3, 2021 determination 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. Ms. Castro appeared telephonically and testified under oath. The DETS was notified of the hearing but declined to appear; it relies on the documents it filed in this appeal and that are admitted as Exhibit 1.

There are two issues before the ALJ: first, whether the claim is barred by AS 23.20.340 for failure to file an appeal within 30 days of a determination; the second is whether the claimant meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

Tyla Castro applied in November 2020 for PUA benefits effective February 22, 2020. The Division determined on February 3, 2021 that she was not eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program. Specifically, the DETS found she had not operated her food truck since 2018 and, implicitly, that she had not established that she was going to restart the business.

Ms. Castro last operated Just Soup in 2018, when she earned about \$5,000. She said she did not declare self-employment taxes and did not file a Schedule C with the IRS because she earned so little. She did not work in 2019 due to personal illness. In January or February of 2020, she had started to think about restarting her business, “Just Soup”, which she had operated from a commercial kitchen from October of 2015 through January of 2019. Instead of a delivery business and event truck, she wanted to operate as a regular food truck, working from May to October. However, because she had been disabled through an arm injury, she did not think she was going to be able to operate a food truck on her own. She initially lined up an employee, but she was hospitalized. She realized she would need insurance and repairs to the truck and was lining that up when other events intervened.

The COVID-19 public health emergency was declared by Governor Dunleavy on March 11, 2020. The first order closing restaurants (but allowing window service) was issued March 17, 2020. The first statewide “stay at home” order was issued March 27, 2020.

Ms. Castro’s husband died of lung cancer April 20, 2020. She had been dependent on his veteran’s benefits and retirement, which ceased with his death. The house, which was in his name, was foreclosed on, because she did not have money to pay the mortgage. With the help of friends, Ms. Castro managed to obtain housing assistance and a short-term forbearance on the mortgage. She was, she said, so overwhelmed and discouraged by the chain of events that she just didn’t know what to do when she received the February letter denying her PUA claim. She could not get anyone on the phone to talk to and was consumed with simply surviving.

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

**The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance, amended by Consolidated Appropriations Act, Public Law 116-260, Div. N, Title II, subchapter IV, Sec. 241 (a).**

(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—

. . .

(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;

. . .

(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

(iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; 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**

In guidance 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 Ms. Castro was naturally overwhelmed by the course of events following her husband’s death. However, I find that her husband’s death occurred some nine months before the determination was issued, and less than three months after she applied for PUA benefits. I find that Ms. Castro did not establish that she had moved in that period, or that she lacked means of contacting the DETS. Ms. Castro had an email account and could have sent an email to the address in the letter, even if she could not get through by phone. I find that Ms. Castro failed to establish that there were circumstances beyond her control after February 3, 2021 that prevented her from filing an appeal by Friday March 5, 2021, or at least closer to that date than the date she filed an appeal, 132 days later. I conclude her appeal is barred by AS 23.20.340.

**Merits**

Even if she had filed a timely appeal, I would reluctantly conclude that Ms. Castro was not eligible for PUA benefits. Her claim rests on her plan to restart her food truck business, Just Soup. I find Ms. Castro wanted to reopen her business. Ms. Castro testified that her first chosen employee was hospitalized, so she could not hire her to assist her. However, she had no evidence of an arrangement with this potential employee. Even if she had hired this employee, she did not have insurance in place, she had not renewed her business license, and the truck had not passed the food inspection<sup>1</sup> that was required before it could operate. While she had experience and familiarity with the business, Ms. Castro had not taken formal steps to reopen Just Soup before the declaration of a COVID-19 public health emergency, let alone before the Governor’s “stay at home” order March 27, 2020. I also find that Ms. Castro’s husband’s final illness and death April 20, 2020, had a severe impact on her planned resumption of the Just Soup business as it depleted the financial resources she needed to reopen her business. I find that Ms. Castro did not provide the documentation required under Sec. 2102(a)(3)(a)(iii) to substantiate that she was going

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<sup>1</sup> Ms. Castro points out that inspections were delayed by COVID-19, but she had not scheduled an inspection and was not ready for one.


to commence self-employment. I reluctantly conclude that Ms. Castro's wish to reopen her business had not moved from "wish" to "scheduled opening" or even "partially implemented plan" that was interrupted by the COVID-19 public health emergency as required by Sec. 2102(a)(3)(A)(ii)(I)(gg) and (kk).

Ms. Castro has had an extraordinarily difficult year. Unfortunately, the Pandemic Unemployment Assistance program was not designed to assist this claimant.

### **DECISION**

The determination of February 3, 2021 is **AFFIRMED**.

Dated: November 1, 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 November 1, 2021, the foregoing decision was served on Tyla Castro (by mail). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

  
Office of Administrative Hearings