

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

In the Matter of)
)
JOSEPH WINKLER) OAH No. 21-1868-PUA
) Agency No. P21 929 03
_____)

APPEAL DECISION

Docket Number: P21 929 03

Hearing Date: 10/29/21

CLAIMANT APPEARANCES:

Joseph Winkler

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Joseph Winkler, submitted a late appeal of a March 4, 2021 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Division of Employment and Training Services (Division) found that the claimant was not eligible for the PUA program starting the week ending January 2, 2021, because he was not impacted by COVID-19 in a manner that made him a “covered individual” as defined by section 2102 of the Act.

The Department of Labor referred the appeal to the Office of Administrative Hearings on September 1, 2021. Under the terms of referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on October 29, 2021. Mr. Winkler testified under oath. At its own election, the Division provided only written materials for the hearing, and was not a live participant.

The issue before the ALJ is whether the claimant’s appeal was timely and, if so, whether he meets the eligibility requirements of the Act.

FINDINGS OF FACT

Mr. Winkler established a claim for Pandemic Unemployment Assistance benefits effective January 2, 2021. The Division initially determined that the claimant was eligible for PUA benefits because he was impacted by COVID-19 in a manner that made him a covered individual under the program. The Division then reversed that decision and is apparently seeking to recoup approximately \$10,000 in overpayment of PUA benefits.

In 2019 Mr. Winkler's wife returned to her position at Wells Fargo Bank at the end of her maternity leave, and Mr. Winkler left his job at Taco Bell to become a full-time, at-home parent to his then 5-year-old son and their newborn baby. To date, this is the arrangement the family largely still maintains. The older child has since begun attending the local elementary school, while Mr. Winkler continues to care for their youngest at home.

The record includes a July 2020 email from the Fairbanks School District informing the claimant that the Kitchen Aide position he applied for has been filled. However, Mr. Winkler acknowledged that the email did not represent a job offer that was withdrawn due to the impact of the COVID-19 pandemic, but rather simply a notice that he was not the candidate selected for the position.

Regarding the untimeliness of his appeal, Mr. Winkler was confused about the termination of benefits. He tried to get in touch with a Division representative by phone but found it difficult to reach someone. He wasn't sure why he did not send an email or written correspondence. When he did finally speak with someone, it was explained to him that he had a right to appeal the decision.

PROVISIONS OF 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:

- (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.

CONCLUSION - TIMELINESS

To extend the 30-day appeal period, Mr. Winkler must show that his failure to timely appeal was due to circumstances beyond his control. He did not make this showing. Reaching Division representatives by phone may have been difficult, but he could not explain why he did not attempt to send a letter or email. A lack of knowledge about the law or how to appeal a PUA eligibility denial is not a circumstance beyond the claimant's control. In addition, the appeal period can only be extended for a "reasonable time." The delay in this case is more than 50 days over the limit.

DECISION - TIMELINESS

The claimant's appeal from the determination dated June 4, 2021 is **NOT ACCEPTED** as timely filed. That determination therefore remains in effect. The claimant is not eligible for PUA benefits. The merits are nonetheless addressed to create a record in the event of further appeal.

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—

(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—

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

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

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(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;

(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;

(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;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(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).

APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance (PUA) defines a “covered individual” as a person who is not eligible for

unemployment benefits under any State or Federal program and who is unemployed because of one or more reasons related to the COVID-19 pandemic. It is undisputed that the claimant's work history did not qualify him for a claim for regular or other unemployment benefits.

Mr. Winkler testified that since the birth of his youngest child prior to the pandemic he has been a full time, stay at home parent, taking care of his two children. Through the course of the COVID-19 health emergency, this has remained his very worthy occupation.


To be eligible for PUA benefits, however, a person must be able to show that the pandemic resulted in the loss of a paying position, or a contracted-for or agreed-upon job opportunity. The eligibility categories from the CARES Act described above include losing or being forced to quit job, or being unable to get to a place of work, as a result of the COVID-19 pandemic. It is undisputed that the claimant in this case did not have employment or an offer of work *outside the home* that was disrupted by the COVID-19 virus. Therefore, he is not eligible for PUA benefits.

The Division has advised OAH that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments.¹ For questions and information regarding options that may be available, the claimant can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

DECISION

The determination issued by DETS on June 4, 2021 is **AFFIRMED**.

Dated: November 2, 2021


Danika B. Swanson
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.

¹ The BPC's overpayment waiver form can be obtained at:
https://labor.alaska.gov/unemployment/documents/Overpayment_Waiver_Application.pdf.

CERTIFICATE OF SERVICE

I certify that on November 3, 2021, the foregoing decision was served on Joseph Winkler (by email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings