

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

In the Matter of )  
 )  
SAMANTHA EDMONDSON ) OAH No. 21-1876-PUA  
 ) Agency No. P21 930 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 930 03

**Hearing Dates:** October 21, 2021,  
November 3, 2021

**CLAIMANT APPEARANCES:**

Samanatha Edmondson

**DETS APPEARANCES:**

None

**CASE HISTORY**

Ms. Edmondson appealed an April 13, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Notice ID No. L001248073. When denying eligibility, the Division noted that: “You were impacted by COVID-19 as not being able to start a new Job with Bushes and Bunches on 5/1/20 however you were not offered work in 2020 with the employer.”<sup>1</sup>

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on September 1, 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 recorded hearings on October 21, 2021 and November 3, 2021. 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 documents provided by DETS are identified as Exhibit 1 and are hereby admitted into evidence.

Ms. Edmondson testified telephonically and under oath. Ms. Edmondson provided documents on November 3 and November 4, 2021. Documents filed on November 3, 2021 are identified as Exhibit A. Documents filed on November 4, 2021 are identified as Exhibit B. Exhibits A and B are hereby admitted into evidence.

The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of Ms. Edmondson’s appeal disqualified her from challenging the determination of

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<sup>1</sup>. Exhibit 1; Page 3.

ineligibility, and, if not, whether Ms. Edmondson meets the eligibility requirements under the act.

### **TIMELINESS OF THE APPEAL**

Under AS 23.20.340 and 8 AAC 85.151 the appeal of an agency determination or re-determination must be filed within 30 days after the determination or redetermination is made. However, the 30-day period may be extended for a reasonable time if the appellant shows that the failure to file within this period was the result of circumstances beyond the appellant's control.<sup>2</sup>

Because the issue of whether the 30-day filing period for appeal should be extended is intimately tied to the overall timeline of events, this Decision will set forth those facts in detail before addressing extension of the filing deadline and the merits of Ms. Edmondson's appeal.

### **FINDINGS OF FACT**

In 2019 Ms. Edmondson had worked as farm labor for Arctic Organic. She worked at Arctic Organic part time for 2-3 months during the summer of 2019. She was paid \$12.50/hour. Ms. Edmondson's last day of work for Arctic Organics was on August 26, 2019. Ms. Edmondson did not apply for any other work for the rest of 2019.<sup>3</sup>

Ms. Edmondson did not have employment, or any attachment to the labor market in January, February, March or April of 2020. Ms. Edmondson began to look for part-time work in late April, or early May of 2020. She applied to restaurants and greenhouses for work. One of the places she applied was Bushes and Bunches(B&B).

In late April, or early May of 2020, she got a call from Vicky Bush, part owner of B&B. Based on this call, Ms. Edmondson believed that she had been hired, with a firm offer to work for B&B when 'things' started up again. While Ms. Edmondson was not provided a firm date when she was going to start work, she expected that she would start the job when they called her in to work sometime in early May 2020. When she did not get called by mid-May 2020, she contacted B&B. She was told that they were not sure if and when they would open, but, if they did, she was going to work. At no point in 2020 was she called in to work for B&B.

B&B is a farming business in Palmer, Alaska. There are two related branches of B&B. One branch is the greenhouse and the other is the farm stand. Both operate primarily indoors. Ms. Edmondson's communication was with the farm stand part of the

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<sup>2</sup> AS 23.20.340 and 8 AAC 85.151.

<sup>3</sup> Exhibit 1: Page 14.

business and it was the farm stand that told her she would begin working for them when they had enough work to hire her.

DETS interviewed Michelle. Michelle is an owner of the greenhouse side of B&B.<sup>4</sup> This interview occurred on April 5, 2021. Michelle reported that while Ms. Edmondson was currently working for the B&B greenhouse<sup>5</sup>, she had not been scheduled to begin work in May of 2020.<sup>6</sup>

Ms. Edmondson then asked Victoria Bush to write a letter to DETS to clarify that Ms. Edmondson had been hired to work for the farm stand business, not the greenhouse. Ms. Edmondson believed that this would clear up Michelle's statement that no job had been offered for 2020. Ms. Edmondson agreed that she had not been offered a job at the greenhouse in 2020.

On June 2, 2021 Victoria Bush wrote a letter that Ms. Edmondson provided to DETS. The letter stated:

To Whom it May Concern:

Re: Samantha Edmondson

"Samantha has approached us twice last year and again this year for employment to early in the year or last year when we were affected by Covid and not sure what would happen.

We are a seasonal employer, a farm, and the labor force always fluctuates with the growing season. Maybe during harvest we will be able to hire her this year."<sup>7</sup>

The appeal hearing in this matter was originally set for October 21, 2021. That hearing was convened, and, shortly thereafter, continued to November 3, 2021. Ms. Edmondson asked for the continuance because she had a conflicting medical appointment.

Prior to finishing the October 21 hearing, the tribunal identified that it appeared that neither of the employer statement in Exhibit 1 supported Ms. Edmondson's claim that she had actually been hired for a job at the farm stand, which was then rescinded due to Covid-19 factors. Ms. Edmondson was encouraged to get clarifying information to the tribunal prior to the November 3, 2021 hearing.

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<sup>4</sup>. Exhibit 1; Page 12.

<sup>5</sup>. Ms. Edmondson was hired by B&B greenhouse sometime in 2021.

<sup>6</sup>. Exhibit 1; Page 12:

Q: "Was Samantha scheduled to begin work, or already working with B&B in May of 2020.?"

A: "No."

<sup>7</sup>. Exhibit 1; Page 13.

On November 3, 2021 a screenshot of an email was received prior to the hearing. It stated:

“To whom it may concern, my name is JanRene Ferns. I work for Bushes Bunches as their Greenhouse Manager. I have found her to be a good person, and a Great worker...she would have been a good asset to our crew!”<sup>8</sup>

At the November 3, 2021 hearing Ms. Edmondson requested one last opportunity to provide a written statement from B&B clarifying the nature of the offer. An order was issued holding the record open until close of business on November 4, 2021. On November 4, 2021 the following email was received:

I JanRene Ferns swear on oath that the follow is the truth. I am Greenhouse Manager for Bushes Bunches Produce Stand. In May of 2020, Samantha Edmonson applied for job at our Farm Store. She spoke with myself, and Vicki Bush. Vicki offered Samantha a job at that time but was not given a start date. Because the Store was suffering from Covid Impact, Samantha never got to work. It was too slow, and mandates had basically shut them down. We worked with a very small crew that Season. It was difficult to say the least, and heavily impacted Samantha.

Sincerely, JanRene Ferns<sup>9</sup>

DETS’ notification that Ms. Edmondson was ineligible for PUA benefits was issued April 13, 2021. Ms. Edmondson confirmed that DETS used her correct mailing address.

On March 5, 2021 DETS issued Letter ID L0010094887.<sup>10</sup> This was a request for information. Ms. Edmondson was instructed to file proof of existing or pending employment/self-employment. She was informed that this information was needed by June 2, 2021. She was informed that DETS would proceed to issue its decision if information was not provided by June 2, 2021.

On April 7, 2021 DETS issued a Notice of Monetary Redetermination<sup>11</sup>. This informed her “You meet the monetary eligibility requirements to establish a claim for Pandemic Unemployment Assistance Benefits. You are entitled to receive benefits as long as you are not disqualified or held ineligible for other reasons.”

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8. Exhibit A.

9. Exhibit B.

10. Exhibit B. DETS did not include this document in Exhibit 1.

11. Exhibit 1; Page 5. Letter ID No. L0012354363.

On April 13, 2021 DETS issued a Notice of Non-Monetary Re-Determination.<sup>12</sup> This notice informed Ms. Edmondson that she was not eligible for PUA benefits effective February 8, 2020. The reason stated was: “You were impacted by COVID-19 as not being able to start a new Job with Bushes and Bunches on 5/1/20 however you were not offered work in 2020 with the employer.”

On April 20, 2021 another Notice of Non-Monetary Issue Determination was issued.<sup>13</sup> This determination informed Ms. Edmondson that:

“Based on information we have reviewed, you have an eligible regular unemployment claim, or you have not filed your quarterly test claim for regular State or Federal UI. In order to be eligible for Pandemic Unemployment Assistance you cannot be eligible for regular Unemployment Compensation, Extended Benefits, or Pandemic Emergency Unemployment Compensation.”

On April 24, 2021 Ms. Edmondson tested positive for COVID-19. She was sick and in quarantine for three weeks. During that period her husband was out of state and she did not have anyone who checked her P.O Box. Ms. Edmondson does not recall seeing the April 13, 2021 notice in her P.O Box when she finally got her mail.

On July 19, 2021 DETS contacted Ms. Edmondson. It was at that time that she learned that she had to file an appeal. On July 19 she filed the appeal.<sup>14</sup>

On July 22, 2021 a letter was issued informing Ms. Edmondson that there were changes to the Cares Act and she might, now be eligible for PUA benefits.<sup>15</sup> Ms. Edmondson was encouraged to contact DETS for potential reconsideration of the prior determination that she was ineligible.

### **The Appeal is Accepted**

AS 23.20.340 establishes that a claimant must file an appeal within 30 days of the final determination or re-determination of her claim. DETS identifies April 13, 2021 as the dates the 30-day limit began. Based on that date Ms. Edmondson’s Appeal was due May 13, 2021 and was 63 days late when filed on July 15, 2021. However, the April 13, 2021 Notice was not the final determination date in this matter. At the time that the April 13, 2021 notification was issued, Ms. Edmondson still had until June 2, 2021 to file documentation with the department. In the March 5, 2021 correspondence<sup>16</sup>DETS

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<sup>12.</sup> Exhibit 1; Page 3. Letter ID No. L0012428073. This Determination is the subject of this appeal

<sup>13.</sup> Exhibit B. Letter ID No. L0012518941. DETS did not include this Notice in Exhibit 1.

<sup>14.</sup> Exhibit 1; Page 1 states that the Appeal was lodged July 15, 2021. Exhibit 1; Page 21 states that it was filed on July 19, 2021.

<sup>15.</sup> Letter ID No. L1114128386.

<sup>16.</sup> Exhibit B; March 5, 2021 Letter ID L0010094887

informed Ms. Edmondson that she had until June 2, 2021 to provide support for her claim, and that thereafter, her claim would be determined based on the evidence in DETS possession<sup>17</sup>. The April 13 notification did not retract the March 5 deadline of June 2, 2021.

Ms. Edmondson interpreted the March 5, 2021 request for information as a document that gave her until June 2, 2021 to get DETS proof she had been offered a job. This was a reasonable interpretation. The March 5, 2021 letter also created a reasonable expectation that DETS would not rule on her PUA claim until at least June 2, 2021. In this context the April 13, 2021 Notice of Non-Monetary Re-Determination, even if she had received it, did not change the fact that she had until June 2, 2021 to file the employer documentation before DETS ruled on her claim. When she then filed the June 2, 2021 letter with DETS she reasonably thought that she had complied with all needed documentation and she was waiting for them to issue a determination. There is no evidence that DETS issued a new re-determination on her eligibility after receiving the June 2, 2021 letter. The phone call from DETS to Ms. Edmondson on July 19, 2021 was the first time she was informed that there had been a determinant of her claim, and she filed an Appeal that same day.

Therefore, this Tribunal finds good cause to extend the deadline for filing an appeal. Ms. Edmondson's appeal is accepted and will be addressed on the merits.

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

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

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law.<sup>18</sup> The CARES Act creates three new unemployment insurance assistance (UI) programs: Pandemic Unemployment Compensation (PUC), Pandemic Emergency Unemployment Compensation, (PEUC) and Pandemic Unemployment Assistance (PUA). PUA provides emergency unemployment assistance to workers who are left out of regular state UI or who have exhausted their state UI benefits(including any Extended Benefits that might become available in the future).<sup>19</sup>

To be eligible, PUA applicants must establish that they are a “covered individual” as defined by the Act. Sec. 2102(3) defines “covered individual”—

(A) means an individual who—

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<sup>17</sup>. *Id.*

<sup>18</sup> CARES Act, S. 3548, 116<sup>th</sup> Cong. (2002).

<sup>19</sup> *Id.*

(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).

### **UIPL 16-20\_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**

To establish Ms. Edmondson is a covered individual under section (gg) of the Alaska Cares Act of 2020, the facts must support a finding that she was attached to the labor force at the time that Covid-19 factors resulted in her being laid off or fired from a job.<sup>20</sup> Ms. Edmondson was not attached to the economy when the Covid closures began. By the time Ms. Edmondson began looking for work in late April and early May 2020 the statewide closures and the hunker down orders were already in effect.

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 at a future, set time.<sup>21</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.

Ms. Edmondson certainly thought that she had been promised a job, and that job would start in early May 2020. There is no indication that she acted in bad faith when seeking PUA benefits, or in lodging this appeal. However, the weight of the evidence supports a finding that Vicky Bush viewed the offer as contingent upon the market for her goods rebounding from the economic impacts of the Covid 19 closures rather than a firm commitment to hire Ms. Edmondson. In her June 2, 2021 letter Vicky Bush acknowledged that her business was in flux when Ms. Edmondson contacted them for work.<sup>22</sup> In the manager's November 3, 2021 email she was clear that a firm offer was not tendered.<sup>23</sup> The last communication from B&B maintains that Ms. Edmondson was not given a firm start date because the impacts of Covid-19 were already affecting B&B.<sup>24</sup>

Given the finding of this tribunal that the only offer tendered to Ms. Edmondson was contingent on business improving at B&B, she does not qualify as a covered individual.

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<sup>20</sup>. UIPL 16-20 Issued by USDOL April 5, 2020 (C)(1).

<sup>21</sup>. UIPL 16-20 Issued by USDOL April 5, 2020 (C)(1)(g).

<sup>22</sup>. "Samantha has approached us twice last year and again this year for employment to early in the year or last year when we were affected by Covid and not sure what would happen."

<sup>23</sup>. "In the month of May of 2020 Samantha Edmondson Denton talked with Myself and Vicki Bush about working at the Farm Store. Unfortunately she was not hired."

<sup>24</sup>. "In May of 2020, Samantha Edmonson applied for job at our Farm Store. She spoke with myself, and Vicki Bush. Vicki offered Samantha a job at that time but was not given a start date. Because the Store was suffering from Covid Impact, Samantha never got to work. It was too slow, and mandates had basically shut them down. We worked with a very small crew that Season."

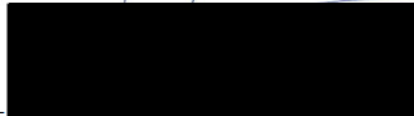
## NOTICE REGARDING POSSIBLE WAIVER OF REPAYMENT BENEFITS

If the division continues to seek recovery of previously paid benefits after this decision Ms. Edmondson can apply for a waiver from repayment. No waiver will be granted if she does not seek it. If a waiver is sought but not granted, Ms. Edmondson must be given a separate appeal hearing on that issue if she 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 Ms. Edmondson can call the BPC at 907-465-2863, 1-888-810-6789, or email to [jnu.bpc@alaska.gov](mailto:jnu.bpc@alaska.gov).

### DECISION

The April 13, 2021 DETS determination is **AFFIRMED**.

Dated: November 12, 2021


  
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.

### CERTIFICATE OF SERVICE

I certify that on November 12, 2021, the foregoing decision was served on Samantha Edmondson (by mail/email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

  
Office of Administrative Hearings