

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

In the Matter of	)	
	)	
BRIAN MILLER	)	OAH No. 21-1951-PUA
<hr style="width: 80%; margin-left: 0;"/>	)	Agency No. P21 945 03

**APPEAL DECISION**

**Docket Number:** P21 945 03

**Hearing Date:** November 9, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Brian Miller

None

**CASE HISTORY**

Mr. Miller appealed a June 4, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under The CARES Act of 2020, Public Law 116-136; Sec. 2102. The decision, recorded in Letter ID L0013316610, denied him PUA eligibility effective the week ending January 2, 2021. When denying eligibility, the Division noted that; “The agency has reviewed your provided documentation and determined it does not substantiate your employment/unemployment as required by the Continued Cares Act, Public Law (Pub. L) 116-260”

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 a recorded hearing on November 9, 2021. Mr. Miller testified telephonically and under oath. At its own election, the Division of Employment and Training Services (Division) provided only written materials for the hearing and was not a live participant. The documents provide by the Division were identified as Exhibit 1 and were admitted into evidence at the hearing.

On November 10, 2021 an order was issued holding the record open until November 18, 2021. Mr. Miller filed Covid test results. These are identified as Exhibit A and admitted into evidence. Mr. Miller filed school closure announcements for the Kenai Peninsula Borough School District. These documents are identified as Exhibit B and are admitted into evidence. Mr. Miller also filed a Copy of a PUA overpayment, Notice

ID No. L001356373 that he received from the Division. This document is identified as Exhibit C and is admitted into evidence.

The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of Mr. Miller's appeal disqualified him from challenging the determination of ineligibility, and, if not, whether Mr. Miller meets the eligibility requirements under the act.

## **FINDINGS OF FACT**

### **Timeliness**

Mr. Miller experienced a serious head injury as the result of a car accident that occurred about 15 years ago. The accident was caused when a driver crossed the center lane and hit the car Mr. Miller was in. In addition to his head injuries there were fatalities from the accident. He testified that he continues to have memory problems as a result of the accident. He confirmed that he has great difficulty in keeping track of dates or schedules. This difficulty was observed during the hearing. Mr. Miller was easily thrown off as to dates, and the sequence of time.

Mr. Miller did not receive the June 4, 2021 Notice of Non-Monetary Issue Determination in the mail. His mailing address is General Delivery in Ninilchik, Alaska and there have been problems with mail getting waylaid. He testified that he did not know that there had been a ruling against him, or that he had to appeal, until he talked to the Division on August 6, 2021. He testified that he had called the Division to talk to staff when he learned that he owed money. He does not remember the date he first called, but he reports that he was put on a "wait list" for them to call him back. He testified that when they called him back, they explained that there had been a decision against him, and they helped him file the appeal.

### **Merits**

The findings of fact will address facts relevant to his eligibility after the week ending January 2, 2021, including the documentation obligations of the Continued Care Act. Since the Division has already determined that Mr. Miller qualified for PUA benefits, through the week ending January 2, 2021, except for the documentation issues, facts on those issues are not addressed.

These findings are based on information in Exhibit 1 and Mr. Miller's credible testimony. Exhibit 1 shows that Mr. Miller sent the Division his 2019 1040 wages in July 2020. The notation reads: "6/29/20: The claimant emailed in his 2019-1040 for the COVID-19 Eligibility task. The COVID-19 Eligibility task was adjudicated to be eligible for PUA."<sup>1 2</sup> He also provided the Division with a notarized statement from Ms.

---

<sup>1</sup>. Exhibit 1: Page 10.

<sup>2</sup>. Exhibit 1 does not contain a copy of the 2019 1040 that the division received in July 2020.

Tony Shaw confirming that he had done handyman jobs for her in 2019.<sup>3</sup> The letter is dated July 5, 2021.<sup>4</sup> Mr. Miller credibly testified that he had worked for Ms. Shaw in 2019 over a period of a few months to build an outdoor structure. He was paid a flat rate of \$2,800.00.

Exhibit 1: Page 18 contains the list of items the Division identified as qualifying documents. In pertinent part it lists Tax Return and Signed affidavit from person(s) verifying your self-employment. The Division's adjudication notes stated, without explanation, that "Docs do not substantiate."<sup>5</sup>

The tribunal took testimony from Mr. Miller regarding what additional documentation he could provide to satisfy the Continuing Cares Act obligations regarding 2019. He testified that the tax document he had already sent to the division showed his wages. He stated that the total wages for he and his wife in 2019 were about \$70,000; of which his wife earned \$55,000. The remaining \$15,000 of reported income was a combination of his permanent fund check, and the money he earned in doing handyman work, in 2019<sup>6</sup>. He said that he and his family live in a very small cabin, and he didn't keep old documents, like receipts, or taxes once they were not needed. He stated that when the Division asked him for those kind of documents, more than a year had passed, and he'd gotten rid of them. He also testified to the difficulty and cost to get a notary to come to Ninilchik, which is about 100-mile round trip from the two nearest towns.

A related issue is whether Mr. Miller's self-employment income in 2020 was significantly diminished as a result of the COVID 19 health emergency. The tax documents show that Mr. Miller's income from his handyman business in 2019 was approximately \$13,394. He testified credibly that his business shut down the first week of March 2020 as people in Ninilchik began to isolate due to Covid alerts. He testified that people cancelled work, and no one wanted him coming to their homes to do work. He also testified that since March 2020, the entire Ninilchik economy has been significantly depressed since the main economic base of Ninilchik is tourism and sport fishing and they were effectively shut down. For Mr. Miller's business that meant that old clients either did not return, for the season, or did not have funds to hire him. It is the tribunal's finding that he made little to no income in 2020 or 2021 and, thus, his handyman business continued to be significantly diminished as a direct result of Covid-19.

In 2021, Mr. Miller continued to be affected by Covid-19's impact on his ability to run his business. His usual work in January and February was related to selling firewood. That work did not occur in 2021. On December 31, 2020 Mr. Miller's wife and son

---

<sup>3</sup> Exhibit 1: Page 11.

<sup>4</sup> There is no information in Exhibit 1 showing the date this letter was received by the Division.

<sup>5</sup> Exhibit 1: Page 17. Employment Substantiation N6-H42N-KH6j.

<sup>6</sup> The 2019 Permanent fund was \$1606. Thus his 2019 handyman wages were \$13,394.

tested positive with Covid-19.<sup>7</sup> Mr. Miller and his daughter developed symptoms but did not get tested. He and his whole family were in quarantine for 2 weeks. The quarantine ended January 14, 2021.

Additionally, Mr. Miller was the parent providing childcare and supervision for his daughter whose school was on remote learning from March 18, 2020 until February 1, 2021<sup>8</sup>. His wife worked a Monday-Friday, 9-5 job, and he was the parent who provided this supervision.

Mr. Miller testified that his outdoor handyman work traditionally resumed in early April. He testified that there was no one hiring for work in Ninilchik. He also stated that he did not look for work outside of Ninilchik because he didn't want to drive the distance to Homer or Soldotna.

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

#### **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.

(f) If a determination of disqualification under AS 23.20.360, 23.20.362, 23.20.375, 23.20.378 - 23.20.387, or 23.20.505 is made, the claimant shall be promptly notified of the determination and the reasons for it. The claimant and other interested parties as defined by regulations of the department may appeal the determination in the same manner prescribed in this chapter for appeals of initial determinations and redeterminations. Benefits may not be paid while a determination is being appealed for any week for which the determination of disqualification was made. However, if a decision on the appeal allows benefits to the claimant, those benefits must be paid promptly.

#### **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

---

<sup>7</sup>. Exhibit A.

<sup>8</sup>. Exhibit B.

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.

**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—

\*\*\*\_\*\*\*\_\*\*\*

(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

### Timeliness

Mr. Miller was a month late in filing his appeal. This tribunal finds that the delay is excusable because it was due to medical conditions outside of his control. The Tribunal also finds that that Mr. Miller contacted the Division as soon as he learned that there was a problem with his eligibility and therefore the 30-day delay was reasonable. Having resolved the timeliness issue in his favor, the tribunal will proceed to rule on the merits.

### Merits

It is the determination of this tribunal that Brian Miller has provided the Division documents that satisfy the Continuing Cares Act documentation requirements. This determination is based on Mr. Miller's testimony at the November 9, 2021 hearing and the information in Exhibit 1. Mr. Miller provided his 2019 1040 form.<sup>9</sup> Mr. Miller also provided a notarized letter from a client confirming that she had hired Mr. Miller to do handyman work in 2019.<sup>10</sup> While the letter is not formatted like a traditional affidavit, it is signed, dated and notarized. Each of these documents satisfies the documents requested by the Division.<sup>11</sup>

The Division has previously determined that Mr. Miller is eligible for PUA benefits beginning the week ending March 7, 2020 to the week ending on January 2, 2021. This tribunal hereby determines that Mr. Miller has complied with the document requirements of the Continuing Cares act by providing his 2019-1040 tax form, and a signed, dated and notarized statement from a client who hired him in 2019.

This tribunal also finds that Mr. Miller established that his income throughout 2020 remained depressed, and that his earnings were substantially diminished. Mr. Miller also testified that he did not travel out of Alaska in 2019-202. He proved that he was able and available to work, in his hometown of Ninilchik, where he customarily had run his business. The only times he could not have worked was the short period when he and the family were in quarantine after his wife and son's positive tests, and in January 2021 when his daughter was in remote learning at home.

Mr. Miller's traditional work schedule does not have him working much, if at all, in February and March. Even if there were not ongoing impacts on the economy, he would not have had income in February and March of 2021. Beginning in April 2021 he was again looking for handyman work and unable to find it. He reported that the arrival of the Delta variant, and the ongoing need to maintaining social distance had a direct impact on his neighbor's ability and desire to having handyman work done on or in their homes.

---

<sup>9</sup>. Exhibit 1: Page 10.


<sup>10</sup>. Exhibit 1: Page 11.

<sup>11</sup>. Exhibit 1: Page 18.

## DECISION

The Division's decision<sup>12</sup>, that Mr. Miller had not complied with the Continued Cares Act document requirements is **REVERSED**. Mr. Miller is eligible for PUA benefits beginning the week ending March 7, 2020 and continuing until the week-ending February 6, 2021. Mr. Miller is also a covered individual from the week ending April 3, 2021 to the week ending September 4, 2021.

Dated: November 22, 2021

  
Karla F. Huntington  
Administrative Law Judge

## APPEAL RIGHTS

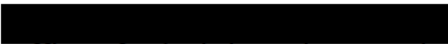
This decision is final unless an appeal is filed in writing to the Commissioner of Labor and Workforce Development **within 30 days** after the decision is mailed to each party. The appeal period may be extended only if the appeal is delayed for circumstances beyond the party's control. A statement of rights and procedures is enclosed.

## NOTICE REGARDING POSSIBLE WAIVER OF REPAYMENT BENEFITS

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

## CERTIFICATE OF SERVICE

I certify that on November 22, 2021, the foregoing decision was served on Brian Miller (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

<sup>12</sup>. Recorded in Letter IDL0013316610.