

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

In the Matter of )  
 )  
BRITTANY PETERMORE ) OAH No. 21-2005-PUA  
 ) Agency No. P21 967 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 967 03

**Hearing Date:** November 10, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Brittany Petermore

None

**CASE HISTORY**

The claimant, Brittany Petermore, appealed a May 11, 2021 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. Her appeal was not filed within 30 days of the determination. The Department of Labor referred the appeal to the Office of Administrative Hearings (OAH). 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 November 10, 2021.

The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of Ms. Petermore's appeal disqualified her from challenging the denial, and if not, whether she meets the eligibility requirements of 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 re-determination 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. In addition, due process requires claimants "be provided a meaningful opportunity to understand, review, and where appropriate, challenge the department's actions."<sup>1</sup>

This Tribunal finds that because the May 11, 2021 re-determination notice did not inform Ms. Petermore that re-determination could result in a requirement she repay

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<sup>1</sup> *Baker v. State, Dept. of Health & Social Services*, 191 P.3d 1005, 1007 (Alaska 2008); *see also Allen v. State, Dept. of Health & Social Services*, 203 P.3d 1155, 1168-70 (Alaska 2009)(discussing recoupment).

the previously dispersed sum, it did not provide her a meaningful opportunity to understand the import of the re-determination decision. Because her appeal occurred promptly after she was given such notice, this Tribunal finds the appeal was timely.

### **FINDINGS OF FACT**

Brittany Petermore established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 18, 2020. The Division originally approved her claim and paid benefits. On May 11, 2021 the Division issued a redetermination that the claimant 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.

The Division also made a demand for repayment of approximately \$15,000.00 in overpaid benefits.

Brittany Petermore moved to Alaska from Arizona in 2015. She became friends with Jaccie Mcanulty in 2016 in unusual circumstances. According to her, Ms. Petermore witnessed the police apprehension of a stolen car. The stolen car belonged to Ms. Mcanulty, who needed assistance to remove the car from the scene and Ms. Petermore agreed to help her.

A friendship developed. Ms. Mcanulty assisted Ms. Petermore in getting a job at the restaurant where she worked. Later, the two women rented apartments in the same complex and shared child watching duties. After a few years, the friendship faded when Ms. Petermore moved to a new apartment but rekindled in 2019 when Ms. Mcanulty coincidentally moved in behind her.

In 2019 Ms. Mcanulty began discussing a business idea with Ms. Petermore. Ms. Mcanulty wanted to start a cleaning and removal business. She named her concept "Peanuts Cleanup Crew." She continued to talk about her plans over the summer. Ms. Mcanulty and Ms. Petermore agreed it would be "fun" for Ms. Petermore to work for the company after it started.

According to Ms. Petermore, Ms. Mcanulty stopped talking about the business after a while and Ms. Petermore assumed the idea had not been more than daydream. In January or February of 2020, however, Ms. Mcanulty told Ms. Petermore that the business was almost ready to be started. Ms. Petermore testified Ms. Mcanulty stated at the time she still planned to hire Ms. Petermore.

On April 19, 2020, the day before Ms. Petermore's birthday, Ms. Mcanulty offered her the job, stating that the business had a cleaning and removal lined up for later that month. Ms. Mcanulty gave Ms. Peterson a written employment contract which Ms. Peterson testified she signed the contract and left it at Ms. Mcanulty's apartment the same day. The employment contract is a typed, multi-page document which specifically identifies Peanuts Cleanup Crew and Ms. Petermore as parties to the contract.

However, when Ms. Petermore contacted Ms. Mcanulty about the job later in the month, Ms. Mcanulty told her the job was not available and she was not going open her business because the pandemic was making it too difficult. Ms. Petermore stated Ms. Mcanulty referred to losing some type of loan or grant, but Ms. Petermore either did not know or could not remember the details. Ms. Petermore testified that Ms. Mcanulty called her a few weeks after that conversation and recommended she file for PUA benefits. Ms. Petermore stated Ms. Mc Mcanulty told her that she could obtain PUA benefits because she was a Peanuts employee who no longer had a job due to the pandemic. Ms. Mcanulty has apparently applied for and collected PUA benefits as the self-employed owner of a cleaning business.

Ms. Petermore established a claim for PUA benefits effective the week ending April 18, 2020. The Division originally approved her claim and paid benefits. Due to changes in the law, in April 2021 the Division requested Ms. Petermore provide additional evidence of her employment.

Ms. Petermore submitted an unsigned copy of an April 19, 2020 employment contract with her name typed in the section regarding parties to the contract. She stated she printed the unsigned copy from an electronic communication with Ms. Mcanulty because she did not receive a copy of the signed contract. She and the Division representative checked records with the State of Alaska Department of Commerce. The records show Jaccie Mcanulty obtained a business license for Peanuts Cleanup Crew on May 21, 2020. The license, AK 2105903, expires December 31, 2022.<sup>2</sup> However, there is no listed telephone or internet presence for the business.<sup>3</sup>

Ms. Petermore gave the Division a telephone number to contact Ms. Mcanulty. According to Division records, when contacted Ms. Mcanulty stated she “never even started (my business). Never had the opportunity to even start it. I never gave anyone a hire date or hired anyone.”<sup>4</sup>

When asked about the contract provided by Ms. Petermore, Ms. Mcanulty told a Division representative that she had her “own business but I didn’t hire her. I wasn’t even ready to start the business. I am saying this because it will affect me if I say I was hiring people when I wasn’t. I don’t know what she is saying, I didn’t even work, didn’t even have a client so no one was hired.”<sup>5</sup>

Ms. Mcanulty did not respond to a subsequent request for information from the Division. Instead, she sent Ms. Petermore a text that read: “You’re still the same f\*\*\*\*\* person man F\*\* it soon as I say I do something I told you I got a call at 8 but

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<sup>2</sup> <https://www.commerce.alaska.gov/cbp/businesslicense/search/License>

<sup>3</sup> A Facebook page for a State of Washington Peanuts Cleaning Service does exist. <https://www.facebook.com/Peanutscleaningservices/>

<sup>4</sup> Ex. 1.

<sup>5</sup> *Id.*

now I'm not going to call s\*\*\* so she's going to base our decision off of whatever the f\*\*\* she wants to cuz I ain't going to f\*\*\*\*\* call her so there you go.”

On May 11, 2021 the Division issued a re-determination that Ms. Petermore was not a covered individual and had been overpaid approximately \$15,424.00 in benefits. Ms. Petermore appealed. The hearing was held November 10, 2021.

After hearing Ms. Petermore's version of events, the ALJ called Ms. Mcanulty. Ms. Mcanulty first stated that Ms. Petermore “was an employee.” Then she stated, “well not really.” When asked to stay on the line to merge with Ms. Petermore so the confusion regarding Ms. Petermore's claim could be resolved, Ms. Mcanulty stayed on the line long enough to hear Ms. Petermore's voice then hung up on the ALJ.

Ms. Mcanulty did not answer the telephone on recall from the ALJ. She did, however, send a vulgar and abusive text message to Ms. Petermore which was forwarded to the OAH.

### **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>6</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>7</sup>

To be eligible, PUA applicants must establish that they are a covered individual under the ACT. CARES Act, Pub. L .No. 116-136 § 2102(a)(3)(A) defines “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

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<sup>6</sup> CARES Act, S. 3548, 116<sup>th</sup> Cong. (2002).

<sup>7</sup> *Id.*

(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**

**Ms. Petermore was a not a covered individual under § 2102(a)(3)(A)(ii)(gg): although she was able to demonstrate that she was offered a job by Peanuts Cleanup Crew, Ms. Petermore could not establish her employment and income were directly impacted by the COVID-19 pandemic as required for coverage by the CARES Act.**

Ms. Petermore was not eligible for regular unemployment according to the records submitted by the Division for the hearing.

Having heard Ms. Petermore's testimony and reviewed the evidence available, this Tribunal has no doubt that Ms. Mcanulty offered Ms. Petermore employment at Peanuts Cleanup Crew *when the business opened*. However, this Tribunal also concludes that Peanuts Cleanup Crew was not an operational business prior to or during the pandemic.

The business had no clients before it "closed." It had neither working capital nor an income stream from which to pay employees. It had no history with the Alaska Department of Labor from which an existing business could be inferred. It did not have a listed telephone number, website, Facebook page, or any electronic presence by which it could be found by potential clients. The only evidence of its existence was a business license paid for after April 19, 2020- which can be purchased online for approximately \$35.00 for two years. Many non-operational businesses continue to have a valid license until the license expires. Under these circumstances the offer to Ms. Petermore was the equivalent of an upcoming restaurateur telling a person, "you can come work for me when my restaurant opens." This is not a circumstance PUA benefits are designed to cover.

Nor does it appear to be the type of self-employment that would justify PUA benefits to Ms. Mcanulty if self-employment was the basis for her PUA claim. Therefore, the ALJ has made a report to DETS for follow-up.

### **NOTICE REGARDING POSSIBLE WAIVER OF REPAYMENT OF BENEFITS**

This decision will not affect repayment of previously approved benefits.

Ms. Petermore testified she provided information in good faith to the Division and relied on its expertise in determining her eligibility. She stated she used the benefits she received to support her family as anticipated. She further claimed it would be an undue hardship to make repayment.

If the Division continues to seek recovery of previously paid benefits after this decision, Ms. Petermore can apply for a waiver from repayment. Given the evidence presented, numerous explanations for Ms. Petermore's and Ms. Mcanulty's behaviors exist. The ALJ is inclined to believe one explanation is more likely than the others; however, resolution of waiver eligibility must first be decided by DETS.

If a waiver is not granted, Ms. Petermore must be given a separate appeal hearing on that issue.

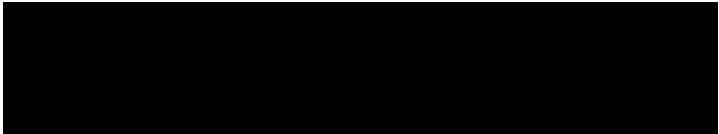
The Division has advised the OAH that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available, the claimant can call the BPC at 907-465-2863, 1-888-810-6789, or email to [jnu.bpc@alaska.gov](mailto:jnu.bpc@alaska.gov).

### **DECISION**

The May 11, 2021 re-determination by the Division is **Affirmed**.

This decision does not address Ms. Petermore's eligibility after the week ending May 15, 2021, the week the Division issued its determination. Subsequent eligibility should be determined by DETS, and the claimant provided a separate right to appeal if required.

Dated: November 10, 2021,




Carmen E. Clark  
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 Brittany Petermore (by mail/email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

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Office of Administrative Hearings