

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

In the Matter of)
)
RYAN PALIC) OAH No. 21-2027-PUA
) Agency No. P21 971 03
_____)

APPEAL DECISION

Docket Number: P21 971 03

Hearing Date: October 26, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Ryan Palic

None

CASE HISTORY

The claimant, Ryan Palic, filed a late appeal of a Division of Employment and Training Services (DETS) determination issued March 9, 2021 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 26, 2021. Mr. Palic appeared telephonically and testified under oath. The DETS was notified of the hearing but chose not to appear or make a representative available by telephone; it relies on the records it filed that are admitted as Exhibit 1.

There are two issues before the ALJ: first, whether the claimant's appeal is barred by AS 23.20.340 as filed more than 30 days after the determination; second, whether the claimant meets the eligibility requirements of the Act.

FINDINGS OF FACT

Ryan Palic established a claim for Pandemic Unemployment Assistance benefits effective March 14, 2020. The Division determined that the claimant was not eligible for PUA benefits because he failed to respond to requests for further information and the information supplied did not establish that he was impacted by COVID-19 in a manner that made him a covered individual under the program.

Mr. Palic supplied an address that is a post office box in Platinum, Alaska, a small village on the southwest coast of Alaska, near Goodnews Bay. He does not live in

Platinum. It is for that reason, he says, that he did not get the mailed notice issued by the DETS. At present, he lives in Anchorage, but he has previously lived in Nevada and Florida. He is a poker dealer by profession and had experience working in casinos in Las Vegas, aboard cruise ships, and Florida. Mr. Palic noted that he had filed his taxes on his earnings as an employee for casinos and as a 1099 employee of the cruise lines. However, in 2018, he moved back to Alaska.

Mr. Palic testified he earned his living as a poker dealer for private games. He testified he works about four to six hours, one hour on, one off, for “tips” that the holder of the winning hand in each game pays the dealer.¹ Mr. Palic’s services as dealer are secured by the person “hosting” the games, but he doesn’t pay Mr. Palic directly (unless, of course, he holds the winning hand). Mr. Palic testified he knows a circle of “businessmen” who regularly host the games, and that players are all respectable members of the community. Mr. Palic testified that he made a regular living in Anchorage this way, earning about \$150 per evening. His “tip sheet” shows he worked eight to ten evenings a month in 2019. He submitted a copy of his accounting of his tips for 2019, totaling \$14,485.

Mr. Palic testified that he was arrested for trespassing at his sister’s house in Togiak, and that this was the reason he was incarcerated briefly in August 2021. He was also incarcerated in Dillingham from June 8, 2021 to July 6, 2021, although this incarceration was the result of more than just trespassing and criminal mischief at his sister’s house in Togiak. Mr. Palic testified he did leave Anchorage to return to Las Vegas because, he said, he had been the victim of a violent crime, and he heard the perpetrator was out of jail; he returned, he said, when he learned he was back in jail.

Mr. Palic applied for PUA benefits on July 20, 2020. He based his claim on being a self-employed person or independent contractor whose work was significantly diminished by the COVID-19 public health emergency. He received benefits from the week ending March 14, 2020 through the week ending December 19, 2020 and from the week ending January 2, 2021 through the week ending January 23, 2021. No further benefits have been paid.

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”—

¹ Mr. Palic insisted that this is not an activity that violates AS 11.66.210 or AS 11.66.220, or AMC 8.60.030 or 8.60.040. Nonetheless, the ALJ cautioned him that he had the right to not to incriminate himself.

- (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—
 - . . .
 - (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 Mr. Palic failed to demonstrate that the reason he did not appeal the determination was a circumstance outside his control. He could have provided an updated address to the DETS. Whatever convenience he may enjoy by a mailing address in Platinum, Alaska in his current occupation, he must understand that prompt receipt of official communications is not one of them. DETS records show that he was called twice, on two different telephone numbers (one he said was one digit off from his sister’s phone number, the other he said was not his). He did not file an appeal until August 31, 2021, 145 days after the appeal deadline on Thursday, April 8, 2021. I find that while Mr. Palic was incarcerated about a month well *after* the deadline. I find he did not present evidence that he was prevented from filing an appeal by April 8, 2021 by circumstances beyond his control. Therefore, I conclude his appeal is barred by AS 23.20.340(e).

Merits.

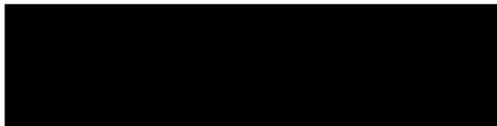
If it is determined that this appeal was timely on further review, I would find that Mr. Palic has not presented substantiation of his self-employment income as required by Section 2102(a)(3)(A)(iii). Mr. Palic’s documentation consists of his tip sheets (that is, a listing of how much he received in tips on a given date in 2019. It relies solely on his testimony that these are accurate “tip sheets” for 2019, and his testimony that private poker games of the sort that Mr. Palic dealt ceased with the March 11, 2020 declaration of public emergency, because, Mr. Palic said, it is difficult to maintain six feet of social distance around a poker table. According to Mr. Palic, games are only now beginning again.

Mr. Palic faces a significant barrier establishing that his unemployment after December 27, 2020 is due to the impact of COVID-19. As these are not games with a state or municipal permit, it is difficult to prove the connection to COVID-19. For example, while the Fur Rondy tournament was cancelled, Mr. Palic had not dealt in that tournament before. Mr. Palic declined to name any of the participants in the games he worked, and he could not secure statements from hosts that they stopped having him deal games because of COVID-19. Thus, even if his tip sheets for 2019 are accurate, they alone do not substantiate his 2020 income or the connection between a drop in 2020 income and a COVID-19 related reason. Therefore, I would conclude Mr. Palic is not eligible for PUA benefits beginning the week ending January 2, 2021.

DECISION

The appeal is **DISMISSED** and the determination of March 9, 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 2, 2021, the foregoing decision was served on Ryan Palic (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