

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

In the Matter of)
)
 TYLER Z. BARNES) OAH No. 22-0338-LUI
) Agency No. 22 0335 74 33 32

APPEAL DECISION (ALLEGED FRAUD)

Docket Number: 22 0335 74 33 32

Hearing Dates: May 12, 2022

CLAIMANT APPEARANCES:

AGENCY APPEARANCES:

Tyler Barnes

None

CASE HISTORY

Tyler Barnes timely appealed a March 17, 2022 determination by the Division of Employment and Training Services (DETS). The determination assessed repayment of overpaid benefits, imposed a disqualification from future benefits, and assessed a monetary civil penalty. The basis for the second and third measures was an allegation of fraudulently misreporting wages. The total liability claimed is \$21,200.¹

The Department of Labor and Workforce Development referred the appeal to this office in April 2022. Under the agreed terms of referral, an administrative law judge hears and decides the appeal under procedures specific to UI appeals. AS 44.64.060 procedures do not apply.

The matter was heard on May 12, 2022. Mr. Barnes testified under oath. Exhibit 1 was admitted. The issue presented at hearing was whether the fraud determination was appropriate. Mr. Barnes did not dispute the issue of overpaid benefits.

FINDINGS OF FACT

When the Covid-19 pandemic began, Tyler Barnes was a 27-year-old construction worker with significant prior experience filing unemployment claims. His work was apparently affected by the pandemic, at least at first.

Mr. Barnes filed for UC by early March of 2020 and continued filing through the week ending July 18, 2020. He also maintained an active claim continuously from the week ending January 9, 2021 through the week ending September 4, 2021. In 29 of the weeks during those two date spans, he reported zero earnings when he in fact had earnings. In 18 of those weeks, the amount earned was substantial enough to eliminate his eligibility for UC benefits and all associated federal pandemic-related payments.

The great majority of the unreported earnings were from Troy Davis Homes (TDH).

1 Ex. 1, p. 21.

Mr. Barnes reports that he was working for TDH under the table. He was paid by barter, receiving his compensation in the form of building materials and other items. He did not expect TDH to report the compensation as wages. However, a TDH accountant—apparently recognizing the legal jeopardy of doing otherwise—converted the earnings to dollars based on an hourly wage and reported them to the Department of Labor and Workforce Development.

Each weekly filing by Mr. Barnes contained one or more misstatements. For each week of UC, he would answer “no” to the question “Did you work for any employers?”

The benefits manual given to beneficiaries makes it very clear that work and income must be reported weekly. Mr. Barnes was aware of this but says that he understood that it was not necessary to report earnings below a certain threshold. Since he worked essentially full time in some of the weeks, earning in excess of \$600, is it hard to believe this could explain his consistent failure to report. I infer that Mr. Barnes knew he was violating the reporting requirements but thought he could get away with doing so because he thought TDH would keep quiet about his under-the-table work.

DETS has determined that Mr. Barnes received \$14,248 in excess state and federal UC, and has calculated penalties at 50%, bringing the total amount owing for repayment to \$21,200. None of these figures are in dispute.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

AS 23.20.387(a), (b) – Disqualification for misrepresentation.

- (a) An insured worker is disqualified for benefits for the week with respect to which the false statement or misrepresentation was made and for an additional period of not less than six weeks or more than 52 weeks if the department determines that the insured worker has knowingly made a false statement or misrepresentation of a material fact or knowingly failed to report a material fact with intent to obtain or increase benefits under this chapter. The length of the additional disqualification and the beginning date of that disqualification shall be determined by the department according to the circumstances in each case.
- (b) A person may not be disqualified from receiving benefits under this section unless there is documented evidence that the person has made a false statement or a misrepresentation as to a material fact or has failed to disclose a material fact. Before a determination of fraudulent misrepresentation or nondisclosure may be made, there must be a preponderance of evidence of an intention to defraud, and the false statement or misrepresentation must be shown to be knowing and to involve a material fact.

8 AAC 85.380 – Disqualification for misrepresentation

- (a) A disqualification under AS 23.20.387 begins with the week in which the department makes the determination of disqualification and may not exceed 52 weeks. The period of disqualification is at least six weeks for each week affected by the false statement, misrepresentation, or failure to report a material fact. Additional weeks of disqualification will be imposed if the circumstances of the case require an increased penalty.
- (b) To determine the period of disqualification under AS 23.20.387 the department will consider
 - (1) the seriousness of the false statement, misrepresentation, or failure to report a material fact;
 - (2) the amount of benefits affected by the false statement, misrepresentation, or failure to report a material fact; and
 - (3) the extent to which the disqualification would deter others from committing a similar offense.
- (c) The period of disqualification under AS 23.20.387 is 52 weeks if the claimant has been previously disqualified, within five years of the date of the determination, for making a false statement or misrepresentation, or failing to report a material fact.

AS 23.20.390(a), (f) – Recovery of improper payments; penalty.

- (a) An individual who receives a sum as benefits from the unemployment compensation fund when not entitled to it under this chapter is liable to the fund for the sum improperly paid to the individual.

* * *

- (f) In addition to the liability under (a) of this section for the amount of benefits improperly paid, an individual who is disqualified from receipt of benefits under AS 23.20.387 is liable to the department for a penalty in an amount equal to 50 percent of the benefits that were obtained by knowingly making a false statement or misrepresenting a material fact, or knowingly failing to report a material fact, with the intent to obtain or increase benefits under this chapter. The department shall deposit into the unemployment trust fund account (AS 23.20.135(a)) a minimum of 30 percent of the penalties collected because of benefits that were obtained by knowingly making a false statement or misrepresenting a material fact, or knowingly failing to report a material fact, with the intent to obtain or increase benefits under this chapter.

APPLICATION

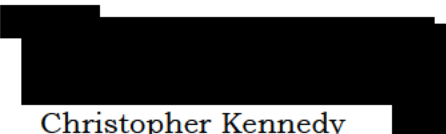
Although Mr. Barnes is a pleasant gentleman who was reasonably straightforward at the hearing, the conclusion is inescapable that he intentionally sought benefits through dishonesty. The fraud determination will be sustained on that basis.

The need to repay overpaid benefits in accordance with the DETS calculation has not been contested. DETS imposed a penalty under AS 23.20.390(f), which authorizes a penalty “equal to 50 percent of the benefits that were obtained by knowingly making a false statement or misrepresenting a material fact, or knowingly failing to report a material fact, with the intent to obtain or increase benefits under this chapter.” And DETS imposed 52 weeks of disqualification under AS 23.20.387, which authorizes a disqualification against a person who “knowingly made a false statement or misrepresentation of a material fact or knowingly failed to report a material fact with intent to obtain or increase benefits under this chapter.” The above fraud finding supports both penalties.

DECISION

The Division’s March 17, 2022 determination (found at Ex. 1, pp. 7-12) is **AFFIRMED**.

DATED June 2, 2022.



Christopher Kennedy
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 June 6, 2022, this document was sent to: Tyler Barnes (by mail and by email); DETS UI Appeals Team (by email); DETS UI Technical Team (by email).


Office of Administrative Hearings



*Alaska Department of Labor and Workforce Development
Appeals to the Commissioner*

Please read carefully the enclosed Appeal Tribunal decision. Any interested party (claimant or the Division of Employment and Training Services [DETS]) may request that the Commissioner accept an *appeal* against the decision (AS 23.20.430-435 and 8 AAC 85.154-155).

A Commissioner appeal must be filed within 30 days after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A Commissioner appeal must be in writing and must fully explain your reason for the appeal. You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner appeals *to the Commissioner's Hearing Officer* at the address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present *written argument* to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an *oral argument*. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

**ALASKA DEPARTMENT OF LABOR
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COMMISSIONER'S HEARING OFFICER
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