

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

In the Matter of)	
)	
BRANDON BURFORD)	OAH No. 22-0275-PUA
)	Agency No. P22 022 03

APPEAL DECISION

Docket Number: P22 022 03

Hearing Date: April 13, 2022

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Brandon Burford

None

CASE HISTORY

The claimant, Brandon Burford, appealed two July 2020 determinations (Letter IDs L0003148832 and L0003263473) denying him Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136, for the whole duration of his claim. Mr. Burford appealed the decisions on March 24, 2022, 20 months after they were issued.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings at the end of March 2022. 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 recorded hearing took place on April 13, 2022. Mr. Burford testified under oath. At its own election, the Division of Employment and Training Services (DETS) provided written materials but was not a live participant.

The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of the appeal disqualifies the claimant from challenging the determination, and if not, whether he meets the eligibility requirements of the Act.

FINDINGS OF FACT

When the pandemic began in 2020, Mr. Burford was apparently trying to make preparations to start a construction business with his father. He reports that it was difficult to get a business license due to pandemic-related delays in state government, and they were not able to launch the business until the following year. He filed a claim for PUA on this basis in June of 2020, immediately receiving nearly \$10,000 in

benefits retroactive to early February of that year.¹ He thought PUA was a “one and done” program, and therefore did not file for or receive any benefits after the week ending June 27, 2020.

On June 29, 2020, as part of routine fraud-prevention checks, DETS sought to verify his identity and asked him to submit a copy of a government-issued ID no later than July 13, 2020.² Mr. Burford did not respond, and on July 15, 2020 DETS issued a formal denial of PUA eligibility on the basis of failure to respond to an information request. The denial letter (L0003148832) was sent to the correct address for Mr. Burford in Anchorage, and there is no basis to believe he did not receive it.³

One week later, DETS sent another eligibility denial letter (L0003263473) denying PUA from the inception of the claim on the basis of a different issue, a purported failure to file requisite unemployment test claims. Again, the letter was sent to the correct address and there is no basis to believe it was not received.

Both letters stated that the claimant could appeal the denial by following a specified appeal process within 30 days. Mr. Burford did not do so.

We should note that the two eligibility problems identified in these letters would have been easy to solve. Mr. Burford was who he claimed to be, and he has since (in 2022) supplied an excellent copy of a government-issued ID. Further, it seems clear that he was ineligible for regular unemployment and he did file at least one test claim.⁴

Mr. Burford appealed the July 2020 denials in a telephone conversation initiated by DETS in late March of 2022. The interaction with DETS seems to have been related to an assertion by the agency that Mr. Burford should repay the PUA benefits he received.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

Alaska Regulation 8 AAC 85.151

Filing of appeals

(a) An interested party may file an oral or written appeal from a determination or redetermination issued under AS 23.20 and this chapter. The appeal may be filed in person, by mail, or by telephone. An oral or written protest indicating a desire to appeal is an appeal to a referee or the commissioner.

¹ The described basis for the PUA claim does not appear to fit the criteria for eligibility. However, so far as the record shows, the claim was never denied for lack of underlying eligibility.

² Ex. 1, p. 16.

³ In a recent telephone call with DETS, he said that when he “got the denial letter [he] forgot about it because it was never reiterated or sent again.” Ex. 1, p. 1.

⁴ Ex. 1, p. 11.

(b) An appeal from a determination or redetermination on a claim for benefits may be filed with a referee or at any office of the division. An appeal must be filed no later than 30 days after the determination or redetermination is personally delivered to the appellant or no later than 30 days after the date the determination or redetermination is mailed to the appellant'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 appellant shows that the failure to file within this period was the result of circumstances beyond the appellant's control.

APPLICATION

TIMELINESS: As the excerpt of law above indicates, a claimant has 30 days to appeal a denial determination. Mr. Burford did not try to contest the denials sent out to him in July 2020 within that time.

To extend the 30-day appeal period, a claimant must show that his failure to timely appeal was due to circumstances beyond his control. Even if this showing is made, the appeal period can only be extended for a reasonable time.

In this case, there is no basis to attribute the lateness of Mr. Burford's appeal to circumstances beyond his control. It appears that he simply was not paying close enough attention. While this is understandable, it forecloses the opportunity to appeal.


The claimant's appeal from the determinations issued in July 2020 is **NOT ACCEPTED** as timely filed. That determinations therefore remains in effect.

DECISION

The determinations in Letter IDs L0003148832 and L0003263473 are **AFFIRMED** on the basis that the appeal was untimely.

Mr. Burford has apparently been asked to repay nearly \$10,000 in overpaid benefits. He may be a good candidate for a waiver of repayment. *The Division has advised that claimants with an overpayment can request a waiver of recoupment by calling Benefit Payment Control at 907-465-2863, 1-888-810-6789, or emailing jnu.bpc@alaska.gov. The form for requesting a waiver is here: https://labor.alaska.gov/unemployment/documents/Overpayment_Waiver_Application.pdf. If a waiver is not granted, Mr. Burford may appeal again from the denial of a waiver.*

Dated: April 13, 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 April 14, 2022 the foregoing decision was served on Brandon Burford (by mail and by email to [REDACTED]). A copy has been emailed to the DETS UI Technical Team, UI Appeals Team, & UI Support Team.

[REDACTED] _____
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
AND WORKFORCE DEVELOPMENT
COMMISSIONER'S HEARING OFFICER**

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