**APPEAL TRIBUNAL DECISION**

**Docket Number:** P20 082 **Hearing Date:** October 5, 2020

**CLAIMANT:**

LANCE FREDERICKS

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Lance Fredericks Sarah Strickler

#### CASE HISTORY

The claimant timely appealed a July 22, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The issue before the Appeal Tribunal is whether the claimant meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

The claimant established a claim for Pandemic Unemployment Assistance benefits effective March 8, 2020. The Division determined that the claimant was not eligible for regular unemployment benefits because he did not have wages in covered employment on which to base a claim.

For the past two years, the claimant has been self-employed selling firewood. He posts ads online to sell the firewood. He does not have a driver’s license, so his brother drives for deliveries. His busy season for firewood sales is October through February or March. The claimant has not kept track of his firewood sales in the past. He estimated that he earned $1,000 per week for 2-3 cords of wood. He did not file tax returns in 2018 or 2019.

The claimant did not get calls as expected in response to his online ads in March 2020. He eventually sold his firewood to friends and family, and he earned $200-$300 per week. He believed that his reduced sales were related to the COVID-19 pandemic, because people did not want to have contact with strangers.

The claimant arranged with a friend to start work at the friend’s father’s plumbing business. The friend spoke to his father in early March 2020 and told the claimant he could start work when another employee left. No date was set for the claimant to start work. The claimant was told he would be paid between $10 and $15 per hour. On March 15 or 16, 2020, the claimant was advised that he would not be hired due to concerns related to the COVID-19 pandemic because the owner’s wife has cancer and the shop is located at the owner’s home.

The claimant worked for a commercial fisherman at the end of the 2019 fishing season. He was not called to work for that boat in 2020. The claimant has had difficulty finding work due to the effects of the COVID-19 pandemic on the local economy and the fact that he does not have a driver’s license.

**STATUTORY PROVISIONS**

**AS 23.20.080 Federal-state cooperation**

(a) In the administration of this chapter, the department shall cooperate, to the extent consistent with this chapter, with the Secretary of Labor, and shall take action through the adoption of regulations, administration methods, and standards that is necessary to obtain for this state and its citizens all advantages available under 26 U.S.C. 3303 and 3304 (Internal Revenue Code) and the Wagner-Peyser Act, as amended. The department shall comply with the regulations of the Secretary of Labor relating to the receipt or expenditure by this state of money granted under these federal laws and shall make reports in the form and containing the information which the Secretary of Labor requires. The department shall comply with the provisions which the Secretary of Labor may from time to time find necessary to assure the correctness and verification of the reports. The department may cooperate with every agency of the United States charged with the administration of an unemployment insurance law.

**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—

(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).

**UIPL 16-20, Change 2 Issued by USDOL July 21, 2020**

Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16- 20, Change 1, explains that an independent contractor who experiences a “significant diminution of work as a result of COVID-19” may be eligible for PUA. With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

 **CONCLUSION**

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is not eligible for unemployment benefits under any State of Federal program and who is unemployed because one of a list of reasons related to the COVID-19 pandemic. The claimant in this case has not recently worked in covered employment that would qualify him for a claim for regular unemployment benefits.

The claimant held that he was affected by the COVID-19 pandemic in several ways, first because he experienced a drop in firewood sales.

The U.S. Department of Labor’s Unemployment Insurance Program Letter 1620, Attachment 1, issued April 5, 2020 provides operating instructions for states administering the federal Pandemic Unemployment Assistance program. States are advised that a determination about whether actions are a “direct result” of the COVID-19 pandemic should be made based on 20 C.F.R. 625.5(c), which is a federal regulation for the administration of the federal Disaster Unemployment Assistance program. The regulation reads:

***Unemployment is a direct result of the major disaster.*** *For the purposes of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:*

*(1) The physical damage or destruction of the place of employment;*

*(2) The physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or*

*(3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.*

The claimant was not prevented from selling firewood by any mandates or by medical advice regarding the COVID-19 virus. Purchasing firewood by phone for delivery does not involve significant contact. His busy season ends in March. He did not track his sales in the past, so his claim that his sales were significantly reduced is speculation on his part. The Tribunal cannot conclude that the claimant’s reduced firewood sales were significant or that they were a direct result of the COVID-19 pandemic.

The claimant also held that he was affected by the pandemic because he expected to start work for a friend’s father’s business. The claimant did not have a start date for the work and he was not told a specific salary he would be paid, only a possible range. The Tribunal cannot conclude that the claimant had a bonefide offer of work which was withdrawn as a direct result of the COVID-19 pandemic.

The claimant also held he was affected by the pandemic because he has problems finding work due to the effects of the COVID-19 pandemic on the local economy.

The United States Department of Labor’s guidance to states on determining eligibility for the Pandemic Unemployment Assistance, in Unemployment Insurance Program Letter, Change 2, Attachment 1, addresses a claimant’s difficulty finding work:

*Eligibility – COVID-19 Related Reasons*

*14. Question: If an individual becomes unemployed for reasons unrelated to COVID-19, and now is unable to find work because businesses have closed or are not hiring due to COVID-19, is he or she eligible for PUA?*

*Answer: No. An individual is only eligible for PUA if the individual is otherwise able to work and available to work but is unemployed, partially unemployed, or unable or unavailable for work for a listed COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Not being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason.*

The Tribunal cannot conclude that the claimant’s unemployment was affected by the COVID-19 pandemic in such a manner that he would meet the definition of a covered individual and eligible for benefits under the CARES Act.

**DECISION**

The determination issued on July 22, 2020 is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program.

####  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.

Dated and mailed on October 28, 2020.

 Rhonda Buness, Appeals Officer