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**APPEAL TRIBUNAL DECISION**

**Docket Number:** P20 119 **Hearing Date:** November 12, 2020

**CLAIMANT:**

ANATOLY MARTUSHEV

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Anatoly Martushev Richard Doogan

#### CASE HISTORY

The claimant timely appealed an August 12, 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 29, 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.

The claimant has worked as a commercial fisherman for the past ten years. He does not own a boat, but works as a skipper on one of five boats owned by other individuals. The claimant also owns a quota of halibut and black cod that he is permitted to catch. He makes arrangements with the boat owners to sell his own catch while working as a skipper.

The claimant fished for grey cod during an opening in January 2020, but the fish processor in Adak that the catch was sold to declared bankruptcy and the claimant was not paid. He was not sure if the processor’s bankruptcy was related to the COVID-19 pandemic or not.

The claimant expected to be hired by one of three boats to fish the halibut and black cod season beginning about March 15, 2020. Two boats the claimant had expected to fish on did not fish the halibut and black cod season because of the poor market price for fish. Another boat owner told the claimant he could not afford to hire him and the owner planned to skipper the boat himself. Fish prices were low in 2019 and lower in 2020. The claimant believes that price for fish was low in 2020 because of difficulties fish processors had getting crews to process the fish because of the pandemic and because many restaurants have been closed due to the pandemic, which affects the demand for fresh fish. Because the fishing profit margin is small, the boat owners decided they might lose money after paying for fuel, bait and crew.

The claimant began fishing when the commercial salmon season opened at the end of June or early July 2020. He also skippered a boat to fish for halibut and black cod in late October, and prices were still severely depressed.

**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 because he was not hired to work as a skipper for boat owners and also catch his own quota of fish. The boat owners did not hire the claimant because of their concerns about poor fish prices, which the claimant attributed to the effects of the pandemic on fish processor and restaurant demand.

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*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=95f1ef42847b6e406cad25b8f1f66177&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5)*'s unemployment is a direct result of the* [*major disaster*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=b3d72d28b6503871d0d0ea61efe37614&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5) *where the unemployment is an immediate result of the* [*major disaster*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=b3d72d28b6503871d0d0ea61efe37614&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5) *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*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=b3d72d28b6503871d0d0ea61efe37614&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5) *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*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=2c12dc9894d26f5e200be47e40f6af03&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5) *due to its closure by or at the request of the federal,* [*state*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=667759d9b94d630ff8d099d7fd7d76b5&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5) *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*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f5fa1bd336151038ef33802286d066eb&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5)*, or the business in the case of a* [*self-employed individual*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=95f1ef42847b6e406cad25b8f1f66177&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5)*, received at least a majority of its revenue or* [*income*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=2095af3d2644c5f6854561b880c52969&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5) *from an entity in the* [*major disaster area*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=2c12dc9894d26f5e200be47e40f6af03&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5) *that was either damaged or destroyed in the disaster, or an entity in the* [*major disaster area*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=2c12dc9894d26f5e200be47e40f6af03&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5) *closed by the federal,* [*state*](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=667759d9b94d630ff8d099d7fd7d76b5&term_occur=999&term_src=Title:20:Chapter:V:Part:625:625.5) *or local government in immediate response to the disaster.*

The claimant has not established that he was unable to work as a direct result of the COVID-19 pandemic. He was not prevented from fishing by government mandates or by medical advice or quarantine. The claimant speculated that he was not able to fish March-April 2020 because fish prices were low because of the COVID-19 pandemic, but this is result of a longer chain of events precipitated by the pandemic and his unemployment is not a direct result of the pandemic. Fish prices were low in 2019, and the price fluctuation is dependent on many factors. The claimant fished for halibut and black cod in October 2020 despite prices remaining low.

The Tribunal concludes the claimant does not meet the definition of a covered individual for the purposes of Pandemic Unemployment Assistance under the CARES Act.

**DECISION**

The determination issued on August 12, 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 November 30, 2020.

 Rhonda Buness, Appeals Officer