

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

In the Matter of)
)
CURTIS ANDERSON) OAH No. 21-0925-CAP
) Agency No. P20 094
_____)

DECISION OF THE COMMISSIONER

I. Introduction

This is an appeal by claimant Curtis Anderson to the Commissioner of Labor and Workforce Development, regarding an Appeal Tribunal decision concerning Mr. Anderson’s Pandemic Unemployment Assistance (PUA) eligibility. The Tribunal had determined that Mr. Anderson was a “covered individual” under the CARES Act (Public Law 116-136) through the week of June 13, 2020, but not thereafter. Mr. Anderson appealed the June 13 benefit cutoff.

The Appeal Tribunal decision is partly erroneous because of a mistaken factual assumption. The Appeal Tribunal decision is MODIFIED to correct the factual misunderstanding.

II. Procedural History

The Office of the Commissioner referred this appeal to the Office of Administrative Hearings (OAH) on May 20, 2021. When the administrative law judge began working on a decision, he discovered that there was an assumption in the decision below that seemed to be contradicted by the evidence. To clarify this issue, a short evidentiary hearing was held on July 22, 2021, with both Mr. Anderson and the Division of Employment and Training Services (DETS) participating.

III. Correction of Factual Error

Mr. Anderson is self-employed. The issue before the Appeal Tribunal was whether, as a direct result of COVID-19, Mr. Anderson experienced a “significant diminution of work” in his self-employment, a criterion for eligibility established under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. The tribunal found that he did—but only until the week ending June 13, 2020.

Mr. Anderson has had three main businesses. The most important one is underwater welding and fiberglass work to maintain boats. A second is running his own fishing boat out of Sitka, participating in gillnet fisheries and sea cucumber diving. The third is occasionally working as a deckhand or otherwise participating for a share on other people’s boats. We will take them up in reverse order.

The third activity has been limited and irregular and does not appear to create a basis for PUA benefits.

The second activity likewise is not a basis for PUA. The Appeal Tribunal addressed the second activity in detail, finding that it did not occur in 2020 because Mr. Anderson's boat had been badly damaged in 2019 after some young people untied it from the dock. Mr. Anderson might have been able to get it back in the water in 2020 if COVID-19 had not affected his other work, because he might then have had more money in the bank with which to repair the boat. But as the Appeal Tribunal correctly explained, this is too indirect a chain of causation to support PUA benefits.

As to the first activity (marine repair specialist), the Appeal Tribunal found benefits to be supported for the weeks that Mr. Anderson would normally have done this work, because his income was impacted by a business slowdown caused by the pandemic's effect on his customers, forcing him to sell his welding equipment so that he could not restart. The Tribunal awarded PUA benefits for the week ending March 14, 2020 through the week ending June 13, 2020. Its key assumption in cutting benefits off at June 13 was that, in a normal year, Mr. Anderson would not have continued his marine repair work after that week because he would ordinarily have started fishing with his own boat (the damaged one) on June 15.

There is one flaw in the Appeal Tribunal's handling of this aspect of the claim. The evidence indicated that Mr. Anderson's boat repair work does not wholly end when he begins fishing with his own boat. Instead, he customarily continues to do boat repair in between openers for the rest of the summer. This means—under the Appeal Tribunal's reasoning—that there would have been additional weeks of eligibility later in the summer. However, the Tribunal seemed to overlook the testimony about the later boat repair work, and did not explore when the intervals between openers would have been after June 15, 2020.

Under ordinary circumstances, this matter would have been remanded to the Appeal Tribunal to take a small amount of additional evidence on intervals between fish openers in Southeast, and what work Mr. Anderson could have expected during those intervals. However,

the case had already been subject to extraordinary delay.¹ Regulation 8 AAC 85.155(c)(1) allows supplemental evidence to be taken at this level rather than through a remand. In the interest of saving both resources and time, that procedure was followed here. A short supplemental evidentiary hearing was held before the undersigned on July 22, 2021. Both Mr. Anderson and DETS representative Alonzo Rumfelt participated.

The supplemental hearing established the following facts about Mr. Anderson's business as an underwater welder/marine repair specialist:

1. He has done this work for decades, including in 2017-2019.
2. The work is year-round, but is quite slow in winter. April and May are the peak months.
3. Mr. Anderson does repair work in town during the summer between gillnet openers. The openers are typically about five days long, meaning that he is able to do marine repair during parts of nearly all weeks.
4. Mr. Anderson participates in the sea cucumber fishery two days per week in October, but continues to do repair work when on the docks.
5. The same reduction in work volume for this business that the Appeal Tribunal found to have been caused by COVID-19 was unchanged during June-October.

When these newly established facts are incorporated in the Appeal Tribunal decision, the result is that Mr. Anderson had PUA eligibility through the date of that decision. This adjustment was discussed at the supplemental hearing, and DETS did not oppose it.

DETS believes, and the administrative law judge concurs, that the record is inadequate to make a decision for the period after the Appeal Tribunal decision was entered. That period has never been evaluated by DETS staff, and it is possible that further investigation would find that the volume of marine repair work in November – February is too small to support a benefit claim. Moreover, Mr. Anderson sold his business entirely in early 2021 under circumstances that have not been explored. Accordingly, if Mr. Anderson seeks benefits after the coverage period addressed in this decision, he will need to work with DETS staff to evaluate whether he has eligibility.


¹ Mr. Anderson initiated his appeal in early August of 2020, and did not receive a decision until late October. There seems to have been some sort of irregularity in processing a Commissioner appeal from Mr. Anderson, but a substitute appeal was accepted in late March of 2021 and it is only being considered now. This implies no criticism of DETS, the Appeal Tribunal, or anyone else—all were doing their best to manage an extreme volume of claims—but it is nonetheless a long delay.

IV. Conclusion


The decision of the Appeal Tribunal is **MODIFIED**. Mr. Anderson is eligible to receive PUA benefits for from the week ending March 14, 2020 (the starting week established in the Appeal Tribunal decision) through the week ending October 24, 2020 (the week of the decision under review). No determination is made as to subsequent weeks.

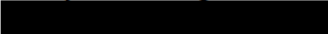
FURTHER APPEAL may be had from this decision by filing a Notice of Appeal in Superior Court for the State of Alaska within 30 days from the date of mailing of this decision, as provided in AS 23.20.445, AS 44.62.560-570, and the Rules of Appellate Procedure of the State of Alaska. Unless an appeal is filed within the 30-day period, this decision is final.


Recommended July 27, 2021:


Christopher Kennedy
Administrative Law Judge

Adopted August 4, 2021:


Dr. Tamika L. Ledbetter
Commissioner

CERTIFICATE OF SERVICE. I certify that on August 4, 2021 the foregoing decision was served on Curtis Anderson (by mail and by email to ). A copy has been emailed to Jaime Watts (UI Technical Team); Pam Frenette (UI Support Team), and appeals@alaska.gov.


Office of Administrative Hearings