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**APPEAL TRIBUNAL DECISION**

**Docket Number:** P20 212 **Hearing Date:** February 22, 2021

**CLAIMANT:**

BRIAN MONTOYA

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Brian Montoya None

Marcus Fuller

#### CASE HISTORY

The claimant timely appealed a September 17, 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 worked as crew member on a fishing vessel in 2019. He was scheduled to begin work on the same vessel in May 2020 in the same capacity. This required the claimant to fly from Kodiak to Anchorage to Valdez to begin work.

The pandemic caused the governments of the state and cities to impose travel mandates to restrict the spread of the illness. The resulting mandates required 14 day quarantines between cities. Anchorage was an exception to this quarantine if time was allotted between flights to receive test results available at the airport in Anchorage.

The airline that served Valdez shut down operations over the entire state due to reasons other than COVID-19. The claimant could get to Anchorage but there were no commercial flights to Valdez. The captain of the vessel had to hire other crew members.

The claimant located some work in Kodiak during July. The price dropped in September so that the captains and owners could not afford to fish as the income would barely cover expenses.

**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—

1. 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 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 was not able to reach the location of his job because an airline closed down its operation for reasons other than COVID-19. He was not directly impacted by COVID-19 but his ability to get to work was exacerbate by the pandemic. This is not one of the criteria set in Public Law 116-136.

Therefore, the claimant cannot be held to be a covered individual for PUA.

**DECISION**

The determination issued on September 17, 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 February 24, 2021.

 Tom Mize

 Appeals Officer