

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

In the Matter of )  
 )  
MARK A. MEYER ) OAH No. 21-0074-PUA  
 ) Agency No. P20 238  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P20 238

**Hearing Date:** February 18, 2021

**CLAIMANT APPEARANCES:**

Mark A. Meyer  
Cynthia Meyer

**DETS APPEARANCES:**

Tara Sidor  
Alonzo Rumfelt

**CASE HISTORY**

The claimant Mark Meyer timely appealed a September 24, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136, effective the week ending February 1, 2020. The determination found he did not meet the eligibility requirements of the Act.

The Department of Labor referred the appeal to the Office of Administrative Hearings on January 28, 2021. Under the terms of the referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. The procedures at AS 44.64.060 do not apply.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act. During the hearing, Mr. Meyer testified under oath, as did Division of Employment and Training Services representative Tara Sidor.

**FINDINGS OF FACT**

The claimant established a claim for PUA benefits effective the week ending February 1, 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's primary business is as a commercial fisherman in the summer months. He spends winters in Hawaii. He typically returns to Alaska in late March and works as an independent contractor, assisting on construction jobs, until fishing work begins in June.

In 2020, the claimant was scheduled to travel from Hawaii to Alaska on March 23<sup>rd</sup>. He planned to work as a construction assistant starting March 25<sup>th</sup>.

The claimant did not travel to Alaska on March 23<sup>rd</sup> for two main reasons. Both the State of Alaska and State of Hawaii were ordering nonessential businesses to close and telling people to stay home in order to reduce spread of the virus that causes COVID-19. The State of Hawaii also had implemented a quarantine restriction on travelers, and claimant was not sure whether he would be allowed to change planes on Oahu or Maui without needing to quarantine.

The claimant also did not travel on March 23, 2020 because he has asthma. His wife is diabetic. Based on publicly available information about heightened health risks from COVID-19 for people with those conditions, the claimant did not want to risk contracting the illness while traveling.

Claimant traveled back to Alaska on June 3, 2020. Pursuant to a local government mandate from his remote community in Southeast Alaska, he then self-quarantined at home for two weeks, through June 17, 2020.

Starting June 18, 2020, the claimant began preparing for the fishing season. He agrees his commercial fishing business was not adversely impacted by the COVID-19 pandemic.

### **RELEVANT STATUTORY PROVISIONS**

#### **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).

## **APPLICATION**

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 or 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.

During the hearing, the claimant clarified that he seeks PUA eligibility for the period from March 25, 2020 through June 17, 2020. He held that his place of self-employment was physically inaccessible to him during this period as a direct result of the pandemic. He asserts that his placement in a high-risk category, travel restrictions, and government stay-home orders prevented him from returning to Alaska in March. Between June 3 and June 17, 2020, he was prevented from working by a local mandate requiring him to self-quarantine.

The CARES Act definition of a covered individual includes persons prevented from getting to their place of work because of advice from a health care provider to self-quarantine due to COVID-19 concerns, or because of a quarantine or mandate that is a direct result of the COVID-19 public health emergency.

Despite understandable concerns about his heightened health risk from traveling in March, the exception in section 2102(a)(3)(A)(ii)(I)(ff) of the CARES Act requires that a health care provider advise the individual to self-quarantine. Because the claimant was not advised by a health care provider not to travel on March 23<sup>rd</sup>, this provision does not apply.

The claimant submitted documents showing travel restrictions, stay-home orders and quarantine mandates issued by the State of Alaska, the State of Hawaii, and his home community of Tenakee Springs. Effective March 20, 2020, the Governor of Hawaii ordered individuals to avoid discretionary travel and stay at home as much as possible. In subsequent orders, the Governor extended the stay-at-home order through May 31, 2020, but provided an exception for individuals leaving Hawaii to return to out-of-state homes. However, it remained unclear whether a 14-day quarantine requirement for inter-island travel would require claimant to quarantine before he could catch a flight leaving the state.

Effective March 28, 2020, Alaska issued an order prohibiting travel to certain small communities like the claimant’s except for very limited essential activities. It does not appear there was an exception for the claimant’s circumstances.

There were numerous governmental restrictions and advisements requiring individuals to stay home in late March 2020 to prevent the spread of COVID-19. The claimant’s self-employment as a construction assistant did not make him an essential worker or

an essential business. Claimant complied with these governmental mandates and was prevented from returning home as planned.

The U.S. Department of Labor provided guidance on this issue in Unemployment Insurance Program (UIPL) Letter No. 16-20, Change 1, dated April 27, 2020. It states in a question and answer section:

40. Question: The examples provided for section 2102(a)(3)(A)(ii)(I)(ee) and (gg) of the CARES Act in UIPL No. 16-20 explain that an individual who is unable to reach the place of employment because of a quarantine, including a state or municipal order restricting travel, may be eligible for PUA. Would this also apply if an individual is following a stay-at-home order?

Answer: Yes. The examples in UIPL No. 16-20 are not intended to be exclusive or comprehensive. An individual may also qualify if he or she is unable to reach the place of employment due to a stay-at-home, shelter-in-place, or other order that requires an individual to stay home in quarantine to reduce the spread of COVID-19.


The claimant showed that he was unable to return to his place of employment because he was following stay-at-home orders and a prohibition on travel to certain small communities. This qualifies him as a covered individual under the PUA program from March 23 through June 3, 2020.

Once the claimant returned to Alaska on June 3, 2020, he was required by local mandate to self-quarantine for 14 days. This prevented access to his work between June 3 and June 17, 2020 and qualifies him as a covered individual for that period.

### **DECISION**

The determination issued on September 24, 2020 is **REVERSED IN PART** and **MODIFIED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program between February 1, 2020 and March 22, 2020. The Division's decision in that regard is affirmed. Claimant is eligible for PUA benefits, effective the week ending March 28, 2020 through the week ending June 20, 2020. The Division's determination in that regard is reversed and modified.

Dated: February 23, 2021

  
For: Kathryn Swiderski  
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 February 23, 2021 the foregoing decision was served on Mark A. Meyer (by email) and a courtesy copy has been emailed to the UI Appeals Office for record keeping.

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Office of Administrative Hearings