

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

In the Matter of )  
 )  
LUKAS KOLSTAD ) OAH No. 21-0185-PUA  
 ) Agency No. P20 303  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P20 303 **Hearing Date:** March 15, 2021

**CLAIMANT APPEARANCES:** **DETS APPEARANCES:**

Lukas Kolstad None

**CASE HISTORY**

The claimant, Lukas Kolstad, timely appealed a September 18, 2020 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Division of Employment & Training Services found that the claimant was not eligible for the PUA program starting the week ending March 28, 2020, because he was not impacted by COVID-19 in a manner that made him a “covered individual” as defined by section 2102 of the Act.

The Department of Labor referred the appeal to the Office of Administrative Hearings on January 29, 2021. Under the terms of referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. AS 44.64.060 procedures do not apply.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

Mr. Kolstad established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 28, 2020. He was not eligible for regular or other unemployment benefits until July 2020, because he did not have wages in covered employment on which to base a claim.

The claimant was employed full-time at Robert’s Sawmill, a business owned and operated by his family until on or about March 30, 2020, when the family decided to shut down business operations due to the Covid-19 pandemic. The claimant and his father both testified under oath that they were “scared of getting sick” at that stage of the pandemic, so they stopped marketing their timber products at the end of March 2020. Their business model involves logging beetle-killed spruce trees and stockpiling logs, then cutting the logs into lumber or timbers for residential construction projects

on orders from customers. They only get paid when a customer enters into a contract for lumber or timbers.

The Kolstad's family business provided timbers for a building framing project in July 2019; then in winter of 2019-2020 they were engaged in logging to add to their stockpile. They did not have a contract for sale of lumber or timber when they shut down operations on March 30, 2020.

The claimant testified that he had \$2000 in income from logging and millwork in 2019, and that but for the loss of business due to the COVID-19 pandemic he expected he would have been able to continue earning a similar level of income in 2020.

The claimant's father was interviewed about the claim by Division personnel in mid-September, 2020. He said at that time that the claimant "only works when there is an order" from a customer, and that he was laid off "because there was not any work and then Covid hit and nobody was doing any order[s]." (Exhibit 1, p. 12.) He also stated then, and confirmed in his testimony, that the business only has revenue when they have a customer under contract for timbers or lumber. The claimant's father testified under oath at the hearing that he was "caught off guard" by questioning during this interview with Division staff; due to his confusion during the interview, he omitted mentioning the logging aspect of the business, and the fact that the claimant was working for the business until March 30, 2020.

### **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

(ll) 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);

(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).

**Unemployment Insurance Program Letter (UIPL) 16-20, Change 2, Issued July 21, 2020, by the U.S. Department of Labor:**

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.

**APPLICATION**

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance (PUA) 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 of one or more reasons related to the COVID-19 pandemic. It is undisputed that the claimant’s work history did not qualify him for a claim for regular or other unemployment benefits in 2020.

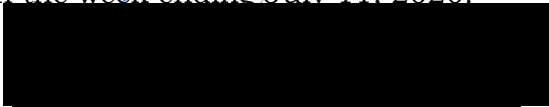
The claimant here was eligible for PUA benefits, because he was employed by his family’s business, Robert’s Sawmill, until the business shut down operations on March 30, 2020 as a result of Covid-19. These facts fall within the eligibility category “the individual's place of employment is closed as a direct result of the COVID-19 public health emergency.”

There remains a question, however, as to when the claimant’s PUA eligibility ended. The claimant and his father both testified that the business only had revenue when a customer placed an order for timbers or lumber, and the claimant would only be paid under those circumstances. It was undisputed that the family business had only one paying customer, in July 2019. The claimant believed that, if not for the COVID-19 pandemic, he had a reasonable expectation of having the potential for a similar level of income in 2020. Based on that expectation, it stands to reason that his PUA eligibility in 2020 would cover a similar timeframe as his income-earning activities in 2019. Therefore, the claimant became eligible for PUA benefits when the family-owned business shut down its operations on March 30, 2020. His eligibility ended when the business would have generated income and paid him as an employee, in mid-July 2020.

## DECISION

The determination issued on September 18, 2020 is **REVERSED in part**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance program, effective the week ending April 4, 2020, through the week ending July 11, 2020.


Dated: March 22, 2021


  
Andrew M. Lebo  
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 March 22, 2021 the foregoing decision was served on Luke Kolstad (by email to  & U.S. mail); a courtesy copy was emailed to the UI Appeals Office, Dep't. of Labor for recordkeeping.

  
Office of Administrative Hearings