

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

In the Matter of)
)
MELVIN TREFON) OAH No. 21-0304-PUA
) Agency No. P20 339
_____)

APPEAL DECISION

Docket Number: P20 339

Hearing Date: March 25, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Melvin Trefon

None

CASE HISTORY

The claimant, Melvin Trefon, timely appealed an October 26, 2020 determination that denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in February 2021. Under the agreed terms of referral, an administrative law judge (ALJ) hears and decides the appeal under procedures specific to PUA appeals. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on March 25, 2021. Mr. Trefon testified under oath. At its own election, the Division of Employment and Training Services (DETS) provided only written materials for the hearing, and was not a live participant.

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

FINDINGS OF FACT

Mr. Trefon established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 21, 2020. The Division ultimately determined that the claimant was not eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a covered individual under the program.

Melvin Trefon lives in Nondalton, a village off the road system near the southern end of Lake Clark. It is not linked to any major airport, but can be reached by air taxi. For many years, Mr. Trefon has been an on-call laborer for Bristol Bay Housing Authority (BBHA). BBHA is an entity associated with Bristol Bay Native Association that builds and maintains affordable housing in 32 Alaska Native communities. BBHA calls Mr. Trefon when it has a project around Nondalton.

In March of 2020, BBHA called Mr. Trefon for work on a renovation project in Nondalton that was to start on approximately March 16 and last approximately three months. This offer has been confirmed by BBHA Deputy Director Emil Larson. The pay rate was to be \$19.58 per hour. However, because of concerns about COVID-19 and COVID-related difficulties with travel, BBHA did not bring a crew to Nondalton as scheduled, and the project was postponed. It did not get put back on the schedule in 2020, but will likely go forward eventually.

EXCERPTS OF RELEVANT PROVISIONS OF 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—

* * *

(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; . . .

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. It is undisputed that the claimant could not qualify for non-PUA unemployment benefits.

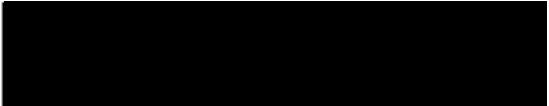
Mr. Trefon had a firm offer to work with a BBHA crew on a renovation project in Nondalton beginning in March of 2020. The project did not occur because of the logistical and safety issues that BBHA perceived in the early days of the pandemic, which interfered with assembling a sufficient crew in Nondalton. The postponement was a “direct result of the COVID-19 public health emergency,” and Mr. Trefon is eligible for PUA under subsection (gg) above for the anticipated duration of the project.

The investigation of this matter showed little understanding of village and rural life, as well as a certain disrespect for the cautious attitude Alaska Native organizations and communities took toward the pandemic. In the adjudicator’s view, BBHA need not have halted the project because it *could* have assembled a crew in Nondalton in March of 2020 without violating any legal mandates. Even if it is true that the crew could have been brought in (and it may not be, for there are many, many ways the situation in March of 2020 could have interfered with assembling a construction crew from around Bristol Bay into the tiny village of Nondalton), this observation is simply irrelevant. BBHA, a quasi-governmental organization, made the determination not to go forward with the project due to COVID. And Mr. Trefon, who had no choice in the matter, did not get the promised job as a result. That is all the law requires for PUA eligibility.

DECISION

The determination in Letter ID L0005894906, to disallow all PUA eligibility to Mr. Trefon, is **REVERSED** for the period from the week ending March 21, 2020 through the week ending June 20, 2020. It is **AFFIRMED** for the period thereafter. Melvin Trefon is eligible for Pandemic Unemployment Assistance from the week ending March 21, 2020 through the week ending June 20, 2020, inclusive.

Dated: March 26, 2021



Christopher Kennedy
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 26, 2021 the foregoing decision was served on Melvin Trefon (by mail and by email). A courtesy copy has been emailed to the UI Appeals Office for recordkeeping.

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Office of Administrative Hearings