

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

In the Matter of)
)
JOSHUA MILLER) OAH No. 21-0246-PUA
_____) Agency No. P20 399

APPEAL DECISION

Docket Number: P20 399

Hearing Date: March 26, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Joshua Miller

None

CASE HISTORY

The claimant, Joshua Miller, timely appealed an October 14, 2020 determination that denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136.¹ 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 26, 2021. Mr. Miller 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 record was kept open until the end of the day on March 26, 2021 for Mr. Miller to submit supporting documentation. He submitted several additional items to the record.

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

FINDINGS OF FACT

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

¹ The notice letter was dated October 15, 2020.

Joshua Miller, a Petersburg resident, earns his living largely through the fishing industry. In 2020 he had four potential sources of income in this area: (1) fishing from his own vessel, the F/V GREAT RUBY, out of Dillingham; (2) fishing in Southeast Alaska with a second vessel he owns; (3) brokering the fish he catches; and (4) working the crab fishery with his brother. These will be addressed in turn below.

(1) The GREAT RUBY was Mr. Miller's primary source of income in recent years, and had the potential to generate substantial profit in 2020. However, it needed about two months of maintenance before it could fish the June-September Bristol Bay season. The necessary work included a new engine, a new refrigeration system, and new fish holds.

Under Dillingham Emergency Ordinance No. 2020-06(A), Mr. Miller needed a travel permit to reach Dillingham to work on his boat. At the hearing, he seemed to say that he applied for the permit in early April, but could not get permission to travel until early June, by which time it would be impractical for him to complete quarantine, get the repairs done, and still have a meaningful season to fish. However, the permit itself shows that when Mr. Miller applied for a permit on April 4, he did not request an early arrival date. He simply asked for approval to arrive on June 1. This was granted by the city manager on April 6. Mr. Miller ultimately did not go to Dillingham.

(2) Mr. Miller has another boat in Bellingham. With that boat, he could have fished out of Petersburg. But to do so, he would need money to bring the boat up the coast and an additional \$10,000 - \$30,000 to lease a license. He did not have the money because he had no income from the Bristol Bay fishery.

(3) Mr. Miller operates Alaska Seafood & Permit Brokerage. The brokerage work is done by telephone, but to do it, Mr. Miller needs something to sell. And in the past, the stock has been supplied by the GREAT RUBY. Since it did not operate in 2020, he did not have anything to broker.

(4) Mr. Miller's brother does crabbing, and apparently would have been willing for Mr. Miller to participate in that fishery with him. This could have happened in the October-December period. Mr. Miller got COVID-19 in mid-November, and he suggests that his illness prevented him from crabbing with his brother. However, the evidence as a whole indicates that if Mr. Miller had really intended to crab with his brother, he would have started before mid-November.

Mr. Miller began full-time employment with Aleutian Spirit, Inc. on January 1, 2021.

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—

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

* * *

(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;

* * *

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or

* * *

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.

* * *

APPLICATION

When the hearing closed, I expected to reverse the denial of Mr. Miller's PUA claim. It appeared from the testimony that he had done everything he could to participate in

the Bristol Bay fishery, but delays imposed by the City of Dillingham made it impossible for him to arrive in time to get his boat ready to fish. However, on looking at the permit, the preponderance of the evidence indicates that--for whatever reason--Mr. Miller simply chose not to try to get to Dillingham two months before the season. Permits were being issued and were being processed promptly, and Mr. Miller was one of the first to seek one, but he did not ask to arrive before June 1. It was not COVID-19 restrictions that caused him to miss the Bristol Bay season, but instead an unexplained choice of his own.²

The loss of brokerage income and the inability to get his boat from Bellingham to Petersburg both flowed from the lack of participation in the Bristol Bay fishery. If that lack of participation was not due to COVID-19, neither were the two downstream consequences.

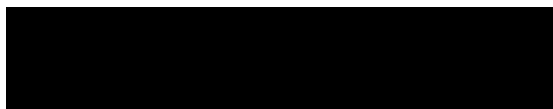
Mr. Miller's November bout of COVID-19 was unfortunate, but probably did not prevent him from accepting any identifiable employment that he otherwise would have accepted. He seems to have already made the choice not to fish with his brother before the infection happened.

For reasons that are not clear from the record, Mr. Miller was initially approved for benefits. He has since been asked to repay them. The Division is required to offer such claimants an opportunity to apply for a waiver. The Division has advised that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available, the claimant can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov. If a waiver is denied, a further appeal of that denial may be possible.

DECISION

The determination in Letter ID L0005480061 is **AFFIRMED**.

Dated: March 31, 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.

² If I have misunderstood this situation, Mr. Miller should appeal to the Commissioner and ask for the case to be remanded to me. He would need to explain very precisely what additional proof he could offer and what it would show.

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 31, 2021 the foregoing decision was served on Joshua Miller (by mail and by email). A courtesy copy has been emailed to the UI Appeals Office for recordkeeping.

Office of Administrative Hearings