

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

In the Matter of)
) OAH No. 21-0297-PUA
) Agency No. P20 411
KIPRAN REUTOV)
)
_____)

APPEAL DECISION

Docket Number: P20 411

Hearing Date: April 14, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Kipran Reutov
Suliman Reutov (April 15, 2021)

CASE HISTORY

The claimant Kipran Reutov 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 April 18, 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 February 25, 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. Reutov testified under oath. During the hearing, the administrative law judge attempted to reach the witness Mr. Reutov wished to call to verify part of his testimony, his brother Suliman Reutov. The following day, Mr. Suliman Reutov called to offer his verification of the claimant's testimony. No testimony was offered by the Division of Employment and Training Services.

FINDINGS OF FACT

The claimant established a claim for PUA benefits effective the week ending February 8, 2020. The Division determined that the claimant was not eligible for PUA benefits beginning the week ending April 18 because "there are no mandates prohibiting commercial fishing."

The claimant established that he is the holder of a halibut and black cod (sablefish) IFQ (Individual Fishing Quota) in the Alaska halibut and sablefish IFQ Program. He ordinarily fishes from Cordova or Whittier a few weeks in March or April, and then

earns money working as construction framer or laborer. In the past, he fished in Prince William Sound, long-lining for halibut and black cod. He stated that he did not go fishing in March 2020 because of the COVID-19 pandemic, but that he was planning to work with his brother, Suliman, framing a house in Anchorage. He stated he had worked with Suliman off and on for 15 years. He stated that his brother called him to tell him that the prospective framing job was “on hold” and, if he had another job available, he should take it. Mr. Reutov stated the framing job never materialized and that his brother took another job. Mr. Reutov did not state that the postponement was specifically related to the COVID-19 pandemic.

In November, toward the end of the Pacific Halibut season, another brother called him to go “fish his IFQ”, so he went fishing out of Whittier on the F/V Eleon for four days.

On April 15, 2020, Mr. Suliman Reutov called and verified that he had indeed called his brother to let him know that the framing job was “on hold” and that it never started up and that he, Suliman Reutov, took another job.

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—

...

(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;

...

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; 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. DETS does not dispute that the claimant had not recently worked in covered employment that would qualify him for a claim for regular unemployment benefits.

March 27, 2020, the Governor issued COVID-19 Health Mandate 011, directing all persons in Alaska, except for those engaged in essential health care services, public governmental services, and essential business activities, to remain at their place of residence and practice social distancing. Those businesses providing essential services and critical infrastructure were directed, to the extent reasonably feasible, take “reasonable precautions to ensure the health of there service sector and employees.” The fishing industry was considered part of “critical infrastructure.”

During the hearing, the claimant stated that he was concerned about going fishing in March because of the inability to social distance on a small fishing vessel. He said it was impossible to socially distance or comply with local mandates or quarantines. However, despite understandable concerns about health risks from working on a

fishing boat, section 2102(a)(3)(A)(ii)(I)(ff) of the CARES Act restricts PUA eligibility to situations where a health care provider advised the individual to self-quarantine. Because the claimant was not advised by a health care provider not to travel or to go fishing due to the risk of COVID-19, this provision does not apply to him. *See, In re: Richard Kaer*, OAH No. 21-0081 (OAH Mar. 7, 2021). And, unlike the claimant in *In re: Mark A. Meyer*, OAH No. 21-0074-PUA (OAH Feb. 23, 2021), this claimant produced no evidence of a local community order or mandate that prohibited him from getting to a community in Prince William Sound to commence a fishing season.

The claimant also asserted that he had a construction job lined up, but that job was postponed indefinitely because of “everything that was happening.” However, section 2102(a)(3)(A)(ii)(I)(gg) restricts PUA eligibility to situations where 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. While the claimant established that he had an offer of employment with his brother’s building contractor business, that offer was contingent on a house framing project going forward. The claimant established that the offer was withdrawn in March 2020, when his brother told him to take another job instead of waiting on the house framing job. However, he did not establish that the offer was withdrawn as a *direct result* of the COVID-19 public health emergency. No evidence was presented that the COVID-19 public health emergency directly caused the indefinite postponement of the framing project.

DECISION

The determination issued on September 24 is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program.

Dated: April 20, 2021

Signed

Kristin Knudsen
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.

I certify that on April 20, 2021, this document was sent to: Kipran Reutov (by mail and by email). A courtesy copy has been emailed to the UI Support Team and the UI Appeals Office.

Signed

Office of Administrative Hearings