

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

In the Matter of)

RYAN LABRUYERE)

) OAH No. 21-0852-PUA
) Agency No. P21-167-03

APPEAL DECISION

Docket Number: P21-167-03

Hearing Date: May 27, 2021

Claimant Appearances:

DETS Appearances:

Ryan LaBruyere

None

CASE HISTORY

The claimant established a claim for Pandemic Unemployment Assistance (PUA) benefits effective the week ending May 30, 2020. The Division of Employment and Training Services (DETS) determined the claimant was not a “covered individual” eligible for PUA benefits and issued a Notice of the determination to the claimant December 1, 2020 [REDACTED]. The determination was appealed January 15, 2021.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on May 3, 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.

This appeal was heard in a recorded hearing on May 27, 2021. The DETS chose to not to appear and provided only written materials for the hearing. Mr. LaBruyere testified under oath but presented no other witnesses. The record was left open until close of business June 2, 2021 to allow Mr. LaBruyere to supply a copy of the local ordinance imposing quarantines on travelers to Cordova.

The issue before the ALJ is whether the claimant filed a timely appeal and whether he meets the eligibility requirements of the Act from the week ending May 30, 2020.

FINDINGS OF FACT

Mr. LaBruyere is a commercial fisherman. He does not have a quota, so fishes as a deckhand for a share of the catch value after expenses. In addition, he fishes his own subsistence allowance and as a proxy for an elder in Cordova. In 2019, he earned about \$40,000 as a fisherman. In 2020, he took a deckhand berth on the F/V Spy, a vessel that was going to fish out of Bristol Bay. When he arrived in Dillingham, he was forced to quarantine for 14 days outside of town, camping on a vacant lot. After he was allowed to leave and travel to Aleknagik, the crew was required to quarantine

again for 14 days. Mr. LaBruyere described how the crewmembers could not even get water themselves or use the washateria. The vessel proved to be poorly maintained. Fumes from a fuel pump leak and other engine problems required the crew to contribute more and more money toward repairs. Mr. LaBruyere finally quit and returned to Cordova via King Salmon on July 16, 2020.

After his return, he was required to quarantine for 14 days by Cordova Health Mandate issued March 20, 2020 (Clay Koplín, Mayor). He testified that shortly after he arrived, he received a call from Aaron Pettingill’s father, Greg Pettingill. Aaron fished Greg’s boat, and he needed a deckhand right away. This would have been for the “Valdez” pink salmon purse seine fishery, that would have run a couple weeks into August. However, because Cordova’s Health Mandate required him to quarantine for 14 days, he could not take the job.

EXCERPTS OF RELEVANT LAW

The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance

(a) DEFINITIONS.—In this section:

...

(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;

...

(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);

APPLICATION

Timeliness.

Mr. LaBruyere explained the 14-day delay in filing his appeal by the failure to receive the December 1, 2021 letter in the mail and then inability of his phone to access email or the form and read it in his UI account. He states he acted promptly as soon as he could do so. While we presume that the letter dated December 1, 2020 was printed and mailed by the state, the delays and delivery failures in U.S. Mail service in December 2020 are well known. As for lack of email or internet access, many Alaskans do not maintain home computer networks with cabled internet. Instead, they rely on public wifi or telephone data plans to access their email. For example, Mr. LaBruyere had to go the Cordova City Hall to get a link to the Health Mandate sent to him so he could forward it to the Office of Administrative Appeals using his phone. While not every instance of delay due to phone difficulty is out of the control of the claimant, in this case the delay is for a reasonable period following a known period of mail delay and is excused.

Merits.

Mr. LaBruyere claimed left his employment in July and arrived in Cordova July 17, 2020. He was able and available to work as a deckhand, but he was unable to accept the offer of employment by Aaron Pettingill extended Saturday July 18, 2020 (when 13 days remained in Mr. LaBruyere's quarantine) (Ex. 1, pg. 22) due to imposition of quarantine. The DETS denied him benefits because he had been "unable to prove he was advised by a health care provider to self-quarantine." (Ex. 1, pg. 11). However, in this case, the requirement was not based on a health care provider's advice – it was based on a legitimate act of a home rule city founded in 1909. As a home rule city, the City of Cordova has all the powers granted by its charter, as long as those powers do not conflict with established state law. AS 29.10.200. The offer of immediate employment was legitimate (Ex. 1, pg. 22), but Mr. LaBruyere was not required to prove that a health care provider advised self-quarantine, if he was required to quarantine so by local government mandate and the quarantine prevented him from taking up the offer.

Mr. LaBruyere testified that the pink season in Prince William Sound generally lasts through the middle of August. However, in 2020, the commercial purse seine fishery for pinks was extended at least through August 21, 2020, with successive 12-hour openings in more limited areas August 21, 22, 23, (Prince William Sound Salmon Fishery Announcement #56, Alaska Dept. of Fish and Game) and August 27, 28, and 29 (Prince William Sound Salmon Fishery Announcement #59, Alaska Dept. of Fish and Game). Thus, if he had been able to accept the Pettingill offer he would have been employed aboard their fishing vessel through the week ending August 29, 2020.

I find that Mr. LaBruyere was prevented from taking up an offer of immediate employment as a deckhand aboard the Pettingill fishing vessel by a quarantine imposed as a direct result of the COVID-19 public health emergency. I conclude that

he is a covered individual under Section 2102(a)(3)(A)(ii)(I)(ee) and entitled to pandemic unemployment assistance benefits through the week ending August 29, 2020.

DECISION

The determination of December 1, 2020 is REVERSED. The claimant is entitled to pandemic unemployment assistance benefits from the week ending July 25, 2020 through the week ending August 29, 2020.

Dated: June 7, 2021.




Kristin Knudsen
Administrative Law Judge

APPEAL PROCEDURE

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 June 8, 2021 the foregoing decision was served on Ryan LaBruyere (by mail and by email). A courtesy copy was emailed to the UI Support Team and the UI Appeals Office.


Office of Administrative Hearings