

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

In the Matter of)
)
EDWARD KOKRINE) OAH No. 21-0759-PUA
) Agency No. P21-239-03
_____)

APPEAL DECISION

Docket Number: P21-239-03

Hearing Date: May 27, 2021

CLAIMANT APPEARANCES:

Edward Kokrine

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Edward Kokrine, appealed a December 4, 2020 determination, issued on December 7, 2020, which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136.

The Department of Labor referred the appeal to the Office of Administrative Hearings on April 1, 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 is a “covered individual” as defined by the Act and therefore eligible for PUA benefits.

FINDINGS OF FACT

The claimant established a claim for PUA benefits effective the week ending February 8, 2020. Mr. Kokrine is a commercial fisherman who lives in Mountain Village, Alaska. He has a fish camp on the Yukon River, and fishes from June to late August or early September, depending on when the fisheries are open. He also accepts occasional day jobs through the Asa’carsarmiut Tribal Council.

The first issue in this appeal is whether Mr. Kokrine’s appeal is timely. The Notice of Non-Monetary Issue Determination was mailed to Mr. Kokrine on December 7, 2020. Exhibit 1, page 2. His appeal was taken by telephone on January 11, 2021. Exhibit 1, page 1. Mr. Kokrine explained that mail delivery to Mountain Village was slower than usual due to the weather that winter, and that he was out of town, in Anchorage, for surgery the denial notice arrived.

In 2020, Mr. Kokrine missed most of the fishing season. He explained that his fishing permits were slow to come that year so he could not start fishing right away. In addition, the local store that sells gas to fisherman stopped taking credit, so he had trouble getting gas to get to his fish camp. Mr. Kokrine also testified that the river was closed to commercial fishing for most of the summer.

Mr. Kokrine also does occasionally work for the Asa'carsarmiut Tribal Council. He does general labor and carpentry work, and whatever other work he can get. He put in his application to work in 2020, but did not get any employment through the Tribal Council. He could not recall whether he did any work for the Tribal Council in 2019. Most of this type of work shows up in the summer when he is at his fish camp.

As of the date of the hearing, Mr. Kokrine was staying at his fish camp waiting for the Department of Fish and Game to open the 2021 summer commercial fishing season. He comes back to Mountain Village about once a week for groceries, gas, and other supplies.

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;

* * *

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

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. 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.

Alaska Regulation 8 AAC 85.151

Filing of appeals

(a) An interested party may file an oral or written appeal from a determination or redetermination issued under AS 23.20 and this chapter. The appeal may be filed in person, by mail, or by telephone. An oral or written protest indicating a desire to appeal is an appeal to a referee or the commissioner.

(b) An appeal from a determination or redetermination on a claim for benefits may be filed with a referee or at any office of the division. An appeal must be filed no later than 30 days after the determination or redetermination is personally delivered to the appellant or no later than 30 days after the date the determination or redetermination is mailed to the appellant's last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. However, the 30-day period may be extended for a reasonable time if the appellant shows that the failure to file within this period was the result of circumstances beyond the appellant's control.

Alaska Rule of Civil Procedure 6

(c) Additional Time After Service or Distribution by Non-Electronic Mail.

Whenever a party has the right or is required to act within a prescribed period after the service or distribution of a document, other than documents served under Civil Rule 4(h), and the document is served or distributed by non-electronic mail, three calendar days shall be added to the prescribed period. However, no additional time

shall be added if a court order specifies a particular calendar date by which an act must occur.

APPLICATION

The first question is whether Mr. Kokrine's appeal was filed on time. The applicable regulation adopts Civil Rule 6 which allows additional time for notices sent by mail. Thus, Mr. Kokrine's appeal was due within 33 days of the date the notice was mailed to him. Mr. Kokrine's appeal was due on January 9, 2021. Because that was a Saturday, he had until Monday, January 11, 2021, to file his appeal. That is the date he appealed. Exhibit 1, page 1. Even if he had been a few days late, Mr. Kokrine's testimony about the slow mail to Mountain Village because of bad weather and being out of town for surgery when the notice likely arrived shows that his delay was caused by circumstances beyond his control. His appeal was timely.

The next question is whether Mr. Kokrine fits within the definition of a covered individual for either his self-employment as a commercial fisher or his intermittent work with the Tribal Council

Commercial Fishing

To qualify for benefits as a self-employed person, Mr. Kokrine must show that his ability to work was significantly reduced by the pandemic. Mr. Kokrine is self-employed each summer as a commercial fisherman. In 2020, his ability to fish was limited. He missed at least one opening, and other fishery openings were closed by the Department of Fish and Game. He experienced delays in getting his fishing permits, and had trouble obtaining gas at the beginning of the season. However, Mr. Kokrine was unable to show that the fish closings or delays were caused by the COVID-19 panic. He was not sure why Fish and Game closed the fishery at different times during the summer, and he didn't fully explain how COVID delayed his permits, or caused the local store to stop accepting credit. Mr. Kokrine submitted additional documents after the hearing that show he did suffer a significant loss of income in 2020. However, he has not clearly shown that this reduction was caused by COVID-19. Mr. Kokrine does not meet the definition of a covered individual for his lost work as a commercial fisherman.

Asa'carsarmiut Tribal Council

Mr. Kokrine has worked for the tribal council in the past on a temporary basis. He would be hired for short term jobs performing various work such as carpentry, general labor, or snow removal. He frequently applies for this work, but most of the jobs occur during the summer when he is fishing, and therefore not available for the temporary work. Mr. Kokrine was not sure if he had any employment through the Tribal Council in 2019. He was not offered a job that was later cancelled due to COVID, and his irregular work in the past was insufficient to establish that he would have been offered work from the Tribal Council during 2020 if the pandemic had not occurred. He has

not shown that he lost this type of work because of COVID-19. Mr. Kokrine does not meet the definition of a covered individual for any lost work from the Tribal Council.

The Tribunal finds the claimant does not meet the definition of covered individual for the purposes of receiving benefits from the PUA program effective the week ending February 22, 2020, through the week ending December 5, 2020.

DECISION

The determination issued on December 7, 2020, is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program beginning the week ending February 22, 2020, through the week ending December 5, 2020.

Dated: June 1, 2021


Jeffrey A. Friedman
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 June 1, 2021 the foregoing decision was served on Edward Kokrine (by mail and by email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings