

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

In the Matter of)
)
LINDA FABRELLO) OAH No. 21-1353-PUA
) Agency No. P21 574
_____)

APPEAL DECISION

Docket Number: P21 574

Hearing Date: August 12, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Linda Fabrello
Frank Churchill

None

CASE HISTORY

Linda Fabrello of Wrangell timely appealed a March 8, 2021 determination (formally noticed in Letter ID L0010110580) that denied a portion of her claim for 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 June 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 August 12, 2021. Ms. Fabrello testified under oath, as did the captain of the vessel on which she works, Frank Churchill. 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

This case is only about nine weeks of benefits, not Ms. Fabrello's eligibility for the whole period of her claim.

Ms. Fabrello established a claim for PUA benefits that was effective the week ending April 4, 2020. Although it initially approved the application and paid benefits from the inception of the claim through several months thereafter, the Division ultimately found that, for the first nine weeks of her claim, Ms. Fabrello was not impacted by COVID-19 in a manner that made her a covered individual under the program. It requested repayment of the amounts paid during that period.

Linda Fabrello, who is in her early seventies, has worked for many years as a deckhand on the F/V NAVIGATOR, a fishing boat owned by Frank Churchill. Mr. Churchill and Ms. Fabrello often fish for winter kings, a fishery that, in 2020, came to an end in mid-March. They do not ordinarily fish in April and May. They usually go out to fish again sometime in June, and there is some prep time to get the boat ready to go out. July through September are their main months of fishing. As they get older, their fishing has become less productive, but they still make some money from fishing and are not fully retired.

Both Ms. Fabrello and Mr. Churchill have conditions that put them at high risk for COVID-19. They were concerned that joining the summer fishery would put them in regular contact with others, particularly on their visits to the tenders. Mr. Churchill elected not to take the NAVIGATOR out to fish in the summer of 2020 due to COVID-19 risk. Because he did not go out, his deckhand's place of employment was effectively closed.

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—

* * *

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

* * *

APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a “covered individual” as a person who is who is unemployed because one of a list of reasons related to the COVID-19 pandemic and is not eligible for unemployment benefits under any State of Federal program. Ms. Fabrello, who is classified as an independent contractor working for a fishing share, is not eligible for unemployment benefits.

Ms. Fabrello certainly has eligibility for PUA benefits during the summer of 2020, because her place of employment was closed as a direct result of COVID-19. Her captain elected not to go out solely for reasons related to the pandemic.


However, the impact of this closure only occurred starting in June. The first summer fishing for the NAVIGATOR ordinarily occurs in June, and the testimony suggested that it does not occur right at the beginning of the month. Thus, the Division’s determination to allow benefits starting May 31, 2020 (i.e., the week ending June 6, 2020) adequately accounts for the June fishery as well as some boat prep time. April and May are normally idle months for this boat, and so its lack of activity in April and May of 2020 are not attributable to the pandemic. Therefore, there is no basis to find fault with the DETS decision to deny benefits for the nine weeks from the week ending April 4, 2020 through the week ending May 30, 2020.

This decision will leave Ms. Fabrello with an overpayment balance. *The Division has advised that claimants with an overpayment can request a waiver of recoupment by calling Benefit Payment Control at 907-465-2863, 1-888-810-6789, or emailing jnu.bpc@alaska.gov. If a waiver is not granted, separate appeal rights apply from the denial of a waiver.*

DECISION

The determination in Letter ID L0010110580 is **AFFIRMED**. The claimant was not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program prior to and including the week ending May 30, 2020. Her eligibility began the following week.

Dated: August 17, 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 August 17, 2021 the foregoing decision was served on Linda Fabrello (by mail and by email to [REDACTED]). A copy was emailed to the UI Support Team, UI Technical Team, and UI Appeals Office.

[REDACTED]
Office of Administrative Hearings