

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

In the Matter of)
)
PATRICK BAUM) OAH No. 21-1432-PUA
_____) Agency No. P21 647

APPEAL DECISION

Docket Number: P21 647

Hearing Date: October 13, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Patrick Baum

None

CASE HISTORY

Patrick Baum appealed a March 29, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0012186002. When denying eligibility, the Division noted “You have been self employed as a commercial fisherman and impacted by Covid-19 on 3/16/20, however, you worked your full season.”

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on June 1, 2021. Under the 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 October 13, 2021. Mr. Baum testified telephonically and under oath. At its own election, the Division of Employment and Training Services (Division) provided only written materials for the hearing and was not a live participant. The record in this matter was held open until October 22, 2021. Mr. Baum provided his 2018 and 2019 1099 forms for his crew job. These are identified and admitted as Exhibit A.

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

FINDINGS OF FACT

Mr. Baum is a commercial fisherman. He is engaged in that field in two separate activities. He owns a permit to troll fish salmon in Southeast Alaska. In that enterprise he owns a boat, The Deep Sea, hires crew, and runs that business. He has fished this permit since 2007. He traditionally fishes the summer troll season and is on the water from early July to late September. Separately, Mr. Baum also has a history of being hired to crew during the longline season for black cod and halibut. He has worked as crew during the longline fishery since 2015.

As to the summer troll fishery, Mr. Baum fished his whole season in 2020. He grossed approximately \$72,000 in his 2020 season.¹ This is less than he earned in 2019 and less than his average take in prior years.² Mr. Baum did not identify any Covid-19 related issues that significantly diminished his income in this business.

As to the longline fishery, Mr. Baum has crewed on the vessel Providence since 2015. The owner of the Providence is Nels Becker.³ Mr. Baum was hired to crew the 2020 season. His job was expected to start the first week of March and continue to the end of April. The first month of crew work was boat preparation. Active fishing usually began April 1 and continued through to the end of April. The fishing schedule resulted in Mr. Baum being out on the water working 24/7 for 4-6 days at a time, depending on the weather and fishing. When the vessel was in port, the crew worked 10-hour days doing boat maintenance.

Mr. Baum did not get to crew the 2020 season because his son's daycare closed, and he was unable to hire or locate childcare for either child.

Mr. Baum has two children. In March 2020 his son was 4 years old, and his daughter was a year old. Mr. Baum's wife worked a 9-5 full time job. In January, February and early March of 2020, the son attended Douglas Day Care and was scheduled to remain enrolled there. On March 18, 2020 Douglas Daycare closed due to the Covid-19 closures.

For January and February of 2020 Mr. Baum was home taking care of his daughter. He and his wife were in the process of hiring in home childcare for the daughter when news of Covid-19 and its expected impact on Juneau, began to sink in. Mr. Baum notified Mr. Becker that he could not crew the 2020 season when it became clear to Mr. Baum that he could not find childcare for either child.

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

1. The Division's adjudication notes state “Climnt worked full fishing season—even admitted to making \$92,000 in 2020.” Exhibit 1; Page 7. Mr. Baum reported that in 2020 he made \$92,000, which included his unemployment insurance. Exhibit 1; Page 11. He testified, that after deducting unemployment insurance, he earned approximately \$72,000.

2. His 2019 gross income for the troll fishery was approximately \$85,000.

3. Mr. Baum's 1099 from his 2018 crewing for Nels Becker reported earnings of \$10,628.00. His 1099 from his 2019 crewing Nels Becker reported earnings of \$11,070.00. The 1099 forms are admitted to the record as Exhibit A.

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—

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;

(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; 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).

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...

APPLICATION

The documentary and testimonial evidence from the October 13, 2021 hearing establishes that Mr. Baum was unable to work as a crew member for the 2020 longline season because he had to provide childcare. Previously, Mr. Baum had had childcare in place so that he could fish the longline season. When his son's childcare closed, he could not find alternative childcare due to the Covid-19 closures. As a crew member he did not have control over what hours or days the vessel fished, so he could not target fishing for when his wife was not working. Douglas Daycare, the son's childcare facility, closed on March 18, 2020. There were no other options available. Mr. Baum had to forgo fishing the 2020 black cod and halibut longline season to provide supervision and care for his son whose childcare facility had closed due to Covid-19. As a direct result of the Covid-19 closures he was not able to crew that year⁴ and therefore experienced a significant diminution of income.

Thus, he was a covered individual under section 3(A) (I) (dd) of the CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance. This eligibility began March 18, 2020 when Douglas Daycare closed.

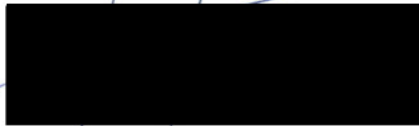
It is determined that his eligibility under section (dd) ended April 30, 2020. While the longline season is year-round, his testimony was that his work on the vessel Providence was usually done by the end of April.

Mr. Baum was able to arrange childcare for the children by July 1, 2020 and thus he was able to fish his permit for the summer troll fishery. While he made slightly less at that fishery than in 2019, he did not claim that the lower gross was related to Covid-19 factors.

DECISION

It is the determination of this tribunal that Mr. Baum fits the definition of a covered individual pursuant to The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance as applied to his work as a crew member for the vessel Providence. The Division's determination that he is ineligible for PUA benefits is **REVERSED**. Mr. Baum's eligibility began the week ending March 21, 2020 and ended the week ending May 2, 2020.

Dated: October 26, 2021



Karla F. Huntington
Administrative Law Judge

⁴ Mr. Baum did not apply to fish the 2021 longline season. He did not contact Mr. Becker to be taken on as crew and he is not seeking benefits for the 2021 longline season.

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.

NOTICE REGARDING POSSIBLE WAIVER OF REPAYMENT BENEFITS

If the division continues to seek recovery of previously paid benefits after this decision Mr. Baum can apply for a waiver from repayment. No waiver will be granted if he does not seek it. If a waiver is sought but not granted, Mr. Baum must be given a separate appeal hearing on that issue if he requests. This decision will affect repayment of previously approved benefits. The Division has advised the OAH that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available Mr. Baum can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

CERTIFICATE OF SERVICE

I certify that on October 26, 2021, the foregoing decision was served on Patrick Baum (by email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

Office of Administrative Hearings