

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

In the Matter of)
)
MICHAEL HARRIS) OAH No. 21-1481-PUA
) Agency No. P21 689
_____)

APPEAL DECISION

Docket Number: P21 689

Hearing Date: August 24, 2021
and
August 26, 2021

CLAIMANT APPEARANCES:

Michael Harris

DETS APPEARANCES:

None

CASE HISTORY

The claimant, Michael Harris, timely appealed an April 9, 2021 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. In its April 9, 2021 Notice of Non-Monetary Issue Re-Determination the Division stated that Mr. Harris did not qualify as a covered individual under the act because “ You have been self-employed as a general laborer and impacted by Covid-19 on March 9, 2020, however, you do seasonal work, and this is your off season.” Letter #L0012401421 specified that Mr. Harris did not meet the eligibility requirements for the week ending July 4, 2020 through the week ending August 29, 2020. The Department of Labor referred the appeal to the Office of Administrative Hearings on August 2, 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 that began on August 24, 2021 and was completed on August 26, 2021. Mr. Harris testified under oath. 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

Michael Harris established a claim for Pandemic Unemployment Assistance benefits effective March 9, 2020. Mr. Harris is a self-employed general laborer¹, whose work is based in Homer, Alaska. He has been doing this work, in Homer, since 2005. During part of the year the bulk of his jobs come from work on commercial fishing boats that are preparing for the fishing season, doing oil spill training, and then doing vessel repairs after the fishing season. This work is based at the Homer shipyard. During other times of the year he continues to do general labor and construction. That aspect of his work consists largely of labor and construction on residential projects. He also harvests and sells firewood. These jobs are almost exclusively in Homer. He was living in Homer and available for work throughout 2020 and 2021.

As stated above, the April 9, 2021 letter states that Mr. Harris was deemed ineligible for the specified period of “the week ending July 4, 2020 through the week ending August 29, 2020”. However, in Exhibit 1, there are expanded dates of ineligibility identified. In Covid-19 Eligibility form# N6-F92F-RK8T, the adjudication notes state that Mr. Harris was approved for only the following dates: “Approving during time periods he would normally work-March through June, off July and August, pick up Oct through Nov, off Dec through Feb.” Exhibit 1; Page 7.

The accounting section of Exhibit 1 shows that he received no benefits, and was denied benefits, from the week ending December 5, 2020 through the week ending February 27, 2021. Exhibit 1; Pages 18-19.

Mr. Harris’s appeal focuses on the months of the year when he claims he also worked as a general laborer, building such structures as fences, decks, stairs, installing weatherization and insulation, and harvesting and selling cords of wood. The months specifically at issue are July, August and December 2020 and January and February 2021.

Mr. Harris had an established pattern of working as an independent contractor in each of these months. For example, in 2018 he spent 6 weeks in the late fall/early winter remodeling a historic log home. In July 2018 he built and installed stairs on a deck. That job took about 40 hours, over 10 days. He charges between \$20.00-\$30.00 an hour depending on the job.

In late 2018 he shattered his ankle and it was not load bearing for 9 months. That injury significantly reduced his 2019 income. But, in addition to some work he was able to do in the shipyard in 2019 he also had ‘on land’ construction and laborer work. While still on crutches he worked on a weatherization project that included removing windows, replacing them with better windows, fixing the vapor barrier and insulating.

¹ The factual findings herein are based on Exhibit 1 and the sworn testimony of Mr. Harris.

In July 2019 he spent days patching the roof and sides of a building. In December 2019 he harvested wood and cut up between 20-30 cords of wood to sell.

By December 2019 his ankle no longer limited his ability to work. In January 2020 he sold wood and earned \$600.00. In February 2020 he built a shed to cover a fuel tank. He also lined up projects for the summer. Prior to Covid-19 closing the Homer economy, he already had 3 projects set up for July and August of 2020. He also expected to get a variety of pick up jobs.

He had a job set up with Patricia to build a 50' x100' fence. That was expected to take 10-12 days at \$20.00/hour working 5-6 hours a day. Patricia cancelled that contract because Covid-19 reduced her ability to pay for the job. That job was set for July 2020.

He had a job set up with Renee. That project was to fix ice dam issues on Renee's roof. It was expected to take 4-6 days to tear off the roof, fix the ice dam issue, and repair and replace the roof. Renee cancelled the project as Renee did not want anyone in the home due to concerns about exposure to Covid-19.

Mr. Harris also had a commitment to build a deck and help put wood siding on a home. In August 2020 he was able to get the foundation completed. Then, due to Covid -19 related supply issues, the cost of buying the wood made that project too expensive for the homeowner, and it was postponed.

That same homeowner then ordered a mill saw to mill his own wood and to mill other wood for local sale. He hired Mr. Harris to work on this project, which was an extension of the original plan to build the deck and side the house in August 2020. Mr. Harris expected this project to start in September 2020 when the mill saw was set to arrive. He planned to continue milling and selling lumber through the fall and winter of 2020 - 2021. In addition to helping mill wood, Mr. Harris was also hired to finish building the mill owner's deck with wood they'd milled. Those two facets of this job would have provided 'land work' to Mr. Harris for December 2020 and January and February 2021. They expected to get the mill delivered in September, but it did not arrive until May 2021 due to supply chain issues caused by Covid-19.

Mr. Harris summed up the impact of Covid-19 on his 'land' work in the contested months as follows: Most of my 'land clients' are people I know from my shipyard work or they are referred to me from people who know me from my shipyard work. All my clients were worried about money because their own livelihood was impacted by Covid-19. They were also worried about having me, or anyone, in their home to do construction. If people did any home projects, they did them themselves instead of hiring to get them done. Plus, because of Covid-19's effect on shipping and supply, the cost of lumber tripled, and was hard to get even at three times the price. There simply was not work even though I kept checking.

He testified that he does not have an ‘off season’. In communication with the Division Mr. Harris identified the scope of his work as: “General labor and shipyard”.² However, when the Division interviewed him the agent only asked about his shipyard work and did not follow up on his reported work throughout the rest of the year. Mr. Harris reported calling back to try to clarify that he worked the rest of the year doing construction projects around town. He reported being on hold for almost 3 hours before getting to talk to Division staff. Mr. Harris reported telling that person that he worked all year, not just some of the months. That person said they did not know anything about his case and was only available to talk for 2-3 minutes.

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—

(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;

(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

² Exhibit 1, Page 8.

benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (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, even absent a suspension of services.

APPLICATION

The Division’s denial appears to be the result of miscommunication. The Division focused on one aspect of his work as an independent contractor, and did not explore his pattern of work, in the same field, during the rest of the year. The Division has already determined that Mr. Harris is a covered individual based on being self-employed and experiencing a significant loss of income due to Covid-19’s impact on available business and opportunities.³ He has now proved to the satisfaction of this tribunal that he did not have an ‘off season’ as identified by the Division. He did not have a pattern of stopping work during the rest of the year. He pivoted his business focus to on land construction projects and focused on doing them during the times of the year when he was less likely to be busy with the shipyard-based contracts. His work during these months was as significantly affected, and reduced, due to Covid-19 as his shipyard work.

The tribunal’s ruling addresses the time period that was identified in letter L0012401421 and the dates deemed ‘off season’ in the adjudication notes on page 7 of Exhibit 1, and in the accounting section of Exhibit 1; Pages 18-19.


DECISION

The Division’s determination that Mr. Harris was not a covered individual during the months of July, August and December of 2020 and during January and February 2021 is **REVERSED**. In addition to the dates for which he has already been deemed eligible, Mr. Harris is a covered individual eligible for PUA benefits from the week

³ Exhibit 1; Page 7.

ending July 4, 2020 through the week ending August 29, 2020, and from the week ending December 5, 2020 through the week ending February 27, 2021.

Dated: October 1, 2021




Karla F. Huntington
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) October 1, 2021, the foregoing decision was served on Michael Harris (by mail). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.



Office of Administrative Hearings