

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

In the Matter of )  
 )  
LARRY J. RUDICK ) OAH No. 21-2000-PUA  
 ) Agency No. P21 961  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 961 **Hearing Date:** November 5, 2021  
**CLAIMANT APPEARANCES:** **DETS APPEARANCES:**  
Larry J. Rudick None

**CASE HISTORY**

The claimant, Larry J. Rudick, timely appealed an August 10, 2021 determination by the Division of Employment and Training Services (DETS) 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 September 1, 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 November 5, 2021. Mr. Rudick appeared telephonically from Ketchikan, Alaska and testified under oath. Mr. Rudick presented one witness, Simeon Cabansag, who also testified under oath. Although notified of the hearing, the DETS chose not to appear or make a representative available by telephone; it relied on the documents it filed in this appeal and that were admitted without objection as Exhibit 1. The record closed at the end of the hearing.

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

**FINDINGS OF FACT**

Larry J. Rudick established a claim for Pandemic Unemployment Assistance benefits on June 19, 2020 effective the week ending March 7, 2020. The DETS determined that he was not eligible because the store he was hired to work at “never opened” and the owner, Cristobal Rodrigo, denied Mr. Cabansag had hiring authority. The DETS therefore determined that the claimant was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a covered individual under the program.

Mr. Cabansag testified that he had worked for Alaska Stone Arts LLC or its predecessor (a sole proprietorship) since 2009. He testified he was the manager of the 125 Main Street store (Alaska Stone Arts LLC owned two stores in Ketchikan). The store is open only for the tourist season; it closes over the winter. He testified he did the inventory, hired and fired employees, managed the stock, secured agreements with artists for pieces sold on commission, and scheduled employee hours. He testified that Mr. Rudick was a very good artist that he had been trying to hire for “a couple years,” to work in the store as a “demonstrator” and to provide pieces for sale. Mr. Rudick, like his father, Larry Rudick Sr., is a carver in cedar. Mr. Rudick Sr., Mr. Cabansag testified, is very well known, and has worked under a similar arrangement at a competitor gallery with excellent sales results.

Mr. Cabansag testified he had discussed the terms of employment, including an hourly wage (\$10/hour) and commission levels (3% the first month and 10% thereafter) on sales. In addition to working about a couple days a week in the shop during the tourist season, Mr. Cabansag wanted to secure some of Mr. Rudick’s pieces for sale in the shop. Mr. Cabansag testified that he and Mr. Rudick came to terms on the arrangement by early March 2020. Mr. Cabansag testified that at the same time, he contacted other workers from the prior year’s tourist season and secured their commitments to return and had also secured another artist’s commission agreement.

Mr. Cabansag testified that the shop did not open in 2020 for the tourist season (generally starting the last week of March and running through the middle of October) because the cruise ships did not come to Ketchikan following the announcement of voluntary suspension of cruise ship operations by the Cruise Lines International Association on March 13, 2020, the Ministry of Transport Canada’s closure of ports to cruise ships carrying more than 100 passengers the same day,<sup>1</sup> and the CDC’s “No sail order” on March 14, 2020.<sup>2</sup>

Mr. Cabansag testified he also was thrown out of work by the premature end of the 2020 tourist season. Mr. Cabansag testified that the shop at 125 Main Street was closed in 2021 by no choice of his, and that they had “been locked out of the store” before the start of the 2021 season with all the inventory and inventory lists inside and unavailable. He testified he believed this was an action of the landlord, not the store owner, but he was not sure who was involved.<sup>3</sup>

---

<sup>1</sup> See, <https://www.canada.ca/en/transport-canada/news/2020/03/government-of-canada-announces-intention-to-defer-the-start-of-cruise-ship-season-in-canada-as-covid-19-response-measure.html>.

<sup>2</sup> Available at: [https://www.cdc.gov/quarantine/pdf/signed-manifest-order\\_031520.pdf](https://www.cdc.gov/quarantine/pdf/signed-manifest-order_031520.pdf).

<sup>3</sup> Public records indicate that the property in which the store is located is part of a bankruptcy estate. Mr. Rodrigo executed a subordination of lease agreement on June 25, 2020 on behalf of Alaska Stone Arts (see Document 2020-001671-0, filed in the Alaska Dept. of Nat. Res. Recorder’s Office), as well as financing agreements using inventory of Alaska Stone Arts, LLC as security.

Mr. Rudick testified that he used to own his own construction business, Alaska Partitions, but that after his son was severely injured and disabled in a car accident, he abandoned the business while the family cared for his son. He testified that he had learned to carve from his father, and that he had carved as a “hobby” for years. He testified that he had known Mr. Cabansag for several years. He testified that he worked as a general carpenter and handyman, doing small jobs, and that he was a member of the Carpenters’ Union, although currently behind on his dues. He testified he agreed to work in Mr. Cabansag’s shop because he had developed more interest in carving following his son’s injury. Mr. Rudick testified he thought it was around the middle of March that he learned the shop would not open because of the lack of tourists and cruise ships.

Mr. Rudick testified that he continued to pursue his other small jobs as a handyman and carpenter. He testified that he initially suffered a downturn in that business due to the COVID-19 pandemic, but that around August of 2020, he began to get calls for small residential remodeling jobs. Mr. Rudick attributed this to the fact that people were stuck in their homes and as a result they noticed things that had gone unaddressed for a long time or they wanted to make their homes more comfortable. Mr. Rudick testified it was not steady work, and it fell off in the winter months from the middle of November through February. He testified that he continued to carve throughout the winter of 2020-2021, and that he was beginning to sell his pieces this year. He testified he was sure to mark them “Larry J. Rudick” to differentiate them from his more well-known father’s pieces.

### **EXCERPTS OF RELEVANT PROVISIONS OF LAW**

#### **The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance, amended by Consolidated Appropriations Act, Public Law 116-260, Div. N, Title II, subchapter IV, Sec. 241 (a).**

(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—

. . .

(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;

. . .

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

(kk) the individual meets any additional criteria established by the Secretary . . . ; 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

(iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; 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).

## **APPLICATION**

I find that both Mr. Cabansag and Mr. Rudick were credible witnesses whose testimony was corroborated from public records. I find that Mr. Cabansag was the manager of the 125 Main Street shop of Alaska Stone Arts LLC.<sup>4</sup> He affirmed that he only acted as manager of the 125 Main Street shop, and was not a general manager of the business, nor a member of the LLC entity. He affirmed that he hired people to work in the shop and had done so for years. On the other hand, Mr. Rodrigo stated he

---

<sup>4</sup> Mr. Cristobal Rodrigo's current State of Alaska entity registration for Alaska Stone Arts LLC lists the following entity address as 22916 99th Pl S, Kent, WA 98031.

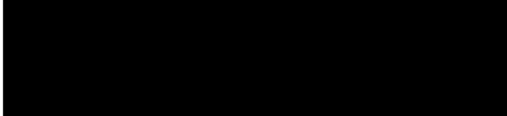
did not know the name “Larry Rudick,” which, given how well-known Larry Rudick Sr. is in the community, is not a credible statement from a person in the business of selling Alaska Native and Northwest Native art in a small community like Ketchikan.

I find that Mr. Rudick was offered a position as a part-time “demonstrator” and carver in the Alaska Stone Arts shop at 125 Main Street during the 2020 tourist season and that the position was withdrawn as a direct result of the COVID-19 public emergency as the Alaska cruise ship season was halted by the CDC’s “No sail order” and the Canadian Government’s closure of its west coast ports. I find that Mr. Rudick’s position was to be seasonal, from the last week of March to the second week of October 2020. I therefore conclude that he was eligible for PUA benefits under Section 2102(a)(3)(A)(ii)(I)(gg) from the week ending April 4, 2020 through the week ending October 17, 2020. I find the offer of employment was only for the 2020 tourist season, as Mr. Cabansag hired all his employees by the season.

### **DECISION**

The determination of August 10, 2021 is REVERSED. Larry J. Rudick is eligible for PUA benefits from the week ending April 4, 2020 through the week ending October 17, 2020. The case is remanded to the DETS for calculation of benefits.

Dated: November 8, 2021,


  
Kris Knudsen  
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 November 8, 2021, the foregoing decision was served on Larry Rudick (by mail and email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

  
Office of Administrative Hearings