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### APPEAL TRIBUNAL DECISION

**Docket Number:** 15 1235 **Hearing Date:** October 6, 2015

**CLAIMANT:**

KEVIN CARTER

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Kevin Carter None

#### CASE HISTORY

The claimant timely appealed a September 21, 2015 redetermination which denied benefits under AS 23.20.378. The issue before the Appeal Tribunal is whether the claimant met work availability requirements of the law.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective June 7, 2015. On August 14, 2015, the Division of Employment and Training Services mailed the claimant a notice of the requirement to complete a reemployment and eligibility assessment interview before September 5, 2015. The claimant did not get the notice until September 9, 2015.

The claimant received his mail at an elderly couples’ address. He does not reside there but chose to receive his mail at that address. The couple went on vacation from August 2, 2015 until about August 30, 2015. The claimant did not have access to the mail while the couple was gone on vacation.

He collected his mail on or about September 9, 2015. He learned that he was required to report for the reemployment and eligibility assessment interview. He contacted the Division on or about September 10, 2015. The earliest interview time available was September 17, 2015. The claimant reported for the interview and completed the interview and assessment on that date.

#### PROVISIONS OF LAW

**AS 23.20.378 provides in part:**

(a) An insured worker is entitled to receive waiting-week credit or benefits for a week of unemployment if for that week the insured worker is able to work and available for suitable work. An insured worker is not considered available for work unless registered for work in accordance with regulations adopted by the department. An insured worker may not be disqualified for failure to comply with this subsection if

(1) the insured worker is not available for work because the insured worker

(A) is ill or disabled;

(B) is traveling to obtain medical services that are not available in the area in which the insured worker resides, or, if a physician determines it is necessary, the insured worker is accompanying a spouse or dependent who is traveling to obtain medical services;

(C) resides in the state and is non-commercially hunting or fishing for personal survival or the survival of dependents;

(D) is serving as a prospective or impaneled juror in a court; or

(E) is attending the funeral of an immediate family member for a period of no longer than seven days; and

(2) a condition described in (1) of this subsection occurs during an uninterrupted period of unemployment immediately following a week for which the insured worker has filed a compensable claim, and work has not been offered that would have been suitable for the insured worker before the illness, disability, hunting, fishing, medical travel, jury service, or funeral attendance.

(b) A waiver of disqualification for an illness or disability under (a)(1) of this section may not exceed six consecutive weeks.

**8 AAC 85.350:**

(a) A claimant is considered able to work if the claimant is physically and mentally capable of performing work under the usual conditions of employment in the claimant's principal occupation or other occupations for which the claimant is reasonably fitted by training and experience.

(b) A claimant is considered available for suitable work for a week if the claimant

(1) registers for work as required under 8 AAC [85.351;](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E351'%5d/doc/%7b@1%7d?firsthit)

(2) makes independent efforts to find work as directed under 8 AAC [85.352](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E352'%5d/doc/%7b@1%7d?firsthit) and 8 AAC [85.355;](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E355'%5d/doc/%7b@1%7d?firsthit)

(3) meets the requirements of 8 AAC [85.353](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E353'%5d/doc/%7b@1%7d?firsthit) during periods of travel;

(4) meets the requirements of 8 AAC [85.356](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E356'%5d/doc/%7b@1%7d?firsthit) while in training;

(5) is willing to accept and perform suitable work which the claimant does not have good cause to refuse;

(6) is available, for at least five working days in the week, to respond promptly to an offer of suitable work; and

(7) is available for a substantial amount of full-time employment.

**8 AAC 85.355:**

The director may review a claimant's registration for work and availability for work at any time during the benefit year. As part of the review, the director shall consider the claimant's training, experience, length of unemployment, plan for obtaining work, barriers to reemployment, and work prospects. On the basis of the review, the director may assign to the claimant new suitable occupation codes, change the claimant's registration for work, assign the claimant to reemployment services or instruct the claimant to make independent attempts to find work that are appropriate for the occupation and labor market. If the claimant fails without good cause to participate in the review, participate in reemployment services as directed by the director, or follow instructions of the division to help the claimant find suitable work, the director shall determine the claimant was not available for work.

**8 AAC 85.357 provides:**

(a) A claimant is not available for work for any week in which the claimant fails to participate in reemployment services if the claimant has been determined by the director likely to exhaust regular benefits and need reemployment services, unless the claimant has

(1) completed the reemployment services; or

1. has good cause under (b) of this section for failure to participate in the reemployment services.

(b) The director shall find that a claimant has good cause for failure to participate in reemployment services or related services under (a) of this section if the cause would lead a reasonable and prudent person not to participate in those services and the claimant took the actions that a reasonable and prudent person would take in order to participate. A claimant no longer has good cause when the cause preventing participation ends. Good cause includes

(1) circumstances beyond the claimant's control;

(2) circumstances that waive the availability for work requirement in AS 23.20.378;

(3) attendance at training approved under AS 23.20.382 and 8 AAC 85.200; and

(4) referral to reemployment services that the director determines was made incorrectly.

[**8 AAC 85.830. Reemployment services**](http://www.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bGroup+!278+aac+85!2E100!27!3A%5d/doc/%7b@1%7d/hits_only?firsthit)

(a) Reemployment services funds must be used to provide reemployment services to unemployment insurance claimants through the one-stop job centers. These services are offered in addition to the usual Wagner-Peyser Act (29 U.S.C. 49) funded employment services in order to accelerate a return to work.

(b) Under the Wagner-Peyser Act, allowable activities include job search and placement services to job seekers, including

(1) counseling;

(2) testing;

(3) occupational and labor market information;

(4) assessment;

(5) referral to employers; and

(6) appropriate recruitment services and special technical services for employers.

(c) Reemployment services may include

(1) services provided to unemployment insurance claimants identified under 8 AAC [85.357](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E357'%5d/doc/%7b@1%7d?firsthit) through the unemployment insurance profiling system;

(2) in-person staff assisted services;

(3) initial claimant reemployment assessments;

(4) career guidance and group and individual counseling, including provision of materials, suggestions, or advice that is intended to assist the job seeker in making occupation or career decisions;

(5) provision of labor market, occupational, and skills transferability information that clarifies claimants' reemployment opportunities and skills used in related or other industries;

(6) referral to job opening information;

(7) referral to employers and registered apprenticeship sponsors;

(8) referral to training;

(9) assessment, including interviews, testing, or employability planning; and

(10) referral to training that is funded by the Workforce Investment Act (29 U.S.C. 2801 - 2945) or STEP ([AS 23.15.620](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/stattx14/query=%5bJUMP:'AS2315620'%5d/doc/%7b@1%7d?firsthit) - 23.15.660), or provided by third party service providers.

#### CONCLUSION

*Once a notice has been properly mailed to an individual's last known address, the Department has discharged its "notice" obligation. Once received at that address, it comes into the control of the person to whom addressed. The appellant's asserted failure to receive the notice does not establish cause for an extension of the appeal period. Andrews, Comm. Dec. 76H-167, Oct. 8, 1976; aff'd Andrews v. State Dept. of Labor, No. 76-942 Civ. (Alaska Super. Ct. 1st J.D., April 13, 1977). There is a rebuttable presumption that a notice placed in the mail will be timely delivered. Rosser, Comm. Dec. 83H-UI-145, June 15, 1983. Only if it can be shown that some circumstances occurred which prevented or reasonably can be shown to have prevented the delivery of the mail can the presumption of timely delivery be overcome. Whitlock, Comm. Dec. No. 9229240, March 17, 1993.*

The claimant chose to receive his mail at the address he provided. The Division met its obligation to provide notice to the claimant when it mailed the notice to the address that he provided. As in Andrews, once received at the address it comes into the control of the party to whom it is addressed.

The claimant brings forth the issue of delivery to a party prior to being given to him personally. The Commissioner of Labor has addressed the issue of mail being delivered to a party other than the claimant in commissioner decision Anderson, Dec. 84H-UI-186, July 20, 1984. The commissioner held in part;

*The failure of a party's agent or employee to act is not such a circumstance [to grant reopening].*

Although the commissioner was addressing reopening of an appeal hearing, the principle is the same. By providing the address of another party, the claimant made the other party his agent for the receipt of mail from the Department. As in Anderson, the claimant was in control of the notice once it was received at his address of record.

As the claimant has not shown that a circumstance beyond his control prevented him from completing the reemployment and eligibility assessment interview, the Tribunal must hold that the claimant remain denied for the weeks ending September 5, 2015 and September 12, 2015.

#### DECISION

The redetermination issued on September 21, 2015 is **AFFIRMED**. Benefits are denied for the weeks ending September 5, 2015 through September 12, 2015.

#### APPEAL RIGHTS

This decision is final unless an appeal is filed 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 appeal rights and procedures is enclosed.

Dated and mailed on October 7, 2015.

Tom Mize

Hearing Officer