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### APPEAL TRIBUNAL DECISION

**Docket Number:** 17 0848 **Hearing Date:** June 30, 2017

**CLAIMANT:**

JUSTIN WILLIAMS

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Justin Williams None

#### CASE HISTORY

The claimant timely appealed a June 12, 2017 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 February 12, 2017. On May 5, 2017, the Division of Employment and Training Services mailed a notice of the requirement to complete a reemployment and eligibility assessment interview before May 27, 2017. The claimant did not get the notice. The claimant changed his address on May 1, 2017. He also provided the post office with a change of address form. The claimant did not receive some of his mail for a month.

On or about June 5, 2017, the claimant received a notice that he had been denied benefits due to failing to complete a reemployment and eligibility assessment. He went to the local job service office and completed the assessment that date.

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#### 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

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 has overcome the presumption of timely delivery of his mail. By doing so, he has shown a circumstance beyond his control kept him from completing the reemployment and eligibility assessment interview by the deadline set in his notice. He completed the assessment interview as soon as he learned of the requirement.

#### DECISION

The redetermination issued on June 12, 2017 is **REVERSED**. Benefits are allowed for the weeks ending May 27, 2017 through June 3. 2017.

#### 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 June 30, 2017.

Tom Mize

Appeals Officer