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### APPEAL TRIBUNAL DECISION

**Docket Number:** 18 0696 **Hearing Date:** April 24, 2018

**CLAIMANT:**

EDDIE MOORE

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Eddie Moore None

#### CASE HISTORY

The claimant timely appealed an April 23, 2018 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 December 3, 2017. On December 29, 2017, the Division of Employment and Training Services mailed a notice to the claimant’s address of record, notifying the claimant that he was required to participate in reemployment services. The notice advised the claimant to schedule and attend an in-person reemployment eligibility assessment interview and complete any assigned activities by January 19, 2018, or benefits would be denied.

The claimant followed the instructions given on the notice. He logged into the Alaska Labor Exchange System (ALEXsys) and scheduled a reemployment and eligibility assessment interview for January 18, 2018. The instructions on the website advised the claimant to report to the local job service office “Station D,” at the time of the interview.

On January 18, 2018, the claimant reported to the local job service office and went to Station D. He knocked on the door but received no answer. He continued to knock off and on for about 30 minutes. He received no answer. He returned home after 30 minutes. He attempted to contacted the claims center by telephone but the line was busy constantly that Friday.

The manager of the local job service office contacted the claimant on January 22, 2018. The manager told the claimant that Station D was not an entrance and the public were required to come to the Resource Center. The claimant told the manager that the website instructed him to go to Station D and made no mention of going to the Resource Center first. He did not schedule another assessment interview at that time.

The claimant began part time work in February. He worked off and on into March. He had difficulty keeping the job because he lost the insurance coverage on his vehicle. He borrowed money to get insurance to continue working. His vehicle broke down. He worked on the employer’s roof to pay back the loan for insurance money. He fell off the roof and was injured.

The claimant became unemployed again at the end of March. He filed an additional claim for benefits. He contacted the local job service office to scheduled an appointment to complete the reemployment and eligibility assessment interview on April 6, 2018. His car would not work and he could not report to the intervoew on that date. He was finally able to complete the assessment interview on April 20, 2018.

#### PROVISIONS OF LAW

**AS 23.20.378 provides in part:**

1. 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.

**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.

# CONCLUSION

Regulation 8 AAC 85.357, above, holds that a claimant is not available for work in any week in which the claimant fails to participate in reemployment services, unless the failure to participate is caused by circumstances beyond the claimant’s control.

*When a claimant approaches an unemployment insurance representative for instructions, it is the responsibility of that representative to provide complete and accurate information regarding the claimant’s request.* Murphy, Comm. Dec. No 87H-UI-283, September 29, 1987.

*We find no material errors in the Tribunal's findings. However, we have previously ruled in* Murphy, Comm. Decision 87H-UI-283, Sept. 29, 1987*, and other cases, that a claimant may rely on the instructions received from an authorized representative of the Employment Security Division. Such instructions may supersede instructions given in written form, such as claimant information handbooks or determinations depending on the circumstances.* Vassar, Comm. Dec. 96 0614, May 15, 1996.

The Division’s website also represents the Division in matters pertaining to applying for and collecting benefits. The claimant followed the instructions to appear for the interview at the date and time scheduled. His failure to complete the interview on January 18, 2018 was due to a circumstance beyond his control.

The claimant has not provided evidence that he attempted to reschedule an assessment interview during the following weeks before he returned to work part time and ceased to file for benefits. His next attempt to schedule an assessment interview was for April 6, 2018. He did not appear for that interview because his vehicle was broken down. A claimant is responsible for his own transportation.

Regulation 8 AAC 85.357, above, also holds that a claimant no longer has good cause when the cause preventing participation ends. The claimant’s “good cause” for not completing his interview ended on January 22, 2018 when he learned where to report for the interview. He has not shown good cause for not completing the interview during any of the weeks following January 18, 2018. He completed the interview until April 20, 2018.

#### DECISION

The determination issued on April 23, 2018 is **MODIFIED**. Benefits are allowed for the week ending January 20, 2018, but remain denied for the weeks ending January 27, 2018 through April 14, 2018.

#### 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 April 24, 2018.

Tom Mize

Appeals Officer