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### APPEAL TRIBUNAL DECISION

**Docket number:** 19 0726 **Hearing date:** August 13, 2019

**CLAIMANT:**

ARLISS TRITT

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Arliss Tritt None

#### CASE HISTORY

The claimant timely appealed a July 15, 2019 redetermination which denied benefits under AS 23.20.378. The issue before the Appeal Tribunal is whether the claimant was available for work.

#### FINDINGS OF FACT

On about June 13, 2019, the claimant contacted the Division to ask why she had not received benefits as expected. The claimant was told she had been sent a notice which advised her to schedule and attend an in-person reemployment eligibility assessment interview and complete any assigned activities by June 7, 2019.

The claimant did not receive a notice. The claimant has frequent problems with her mail box being broken into and her mail stolen. The claimant has reported the problem to the Post Office, but the break-ins continue and the claimant now waits at home for her mail delivery each day to ensure she receives her mail.

The claimant scheduled an in-person reemployment interview for June 14, 2019, but she was not able to attend that interview because she had to appear in court for a matter in which she was the victim of an assault.

The claimant did not attempt to schedule another interview until June 24, 2019, when she scheduled an interview for that date. The claimant had delayed scheduling the interview because she did not want to take her 11-year old child with her and she did not have anyone to watch her child at that time and could not afford paid child care. The claimant did not attend the interview on June 24, 2019 because she did not have bus fare to get to the Job Center as a result of not receiving unemployment benefits for the previous weeks.

On July 9, 2019, the claimant scheduled an interview for July 12, 2019. She completed the interview on that day.

#### PROVISIONS OF LAW

**AS 23.20.378 provides:**

(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....

**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;

(2) makes independent efforts to find work as directed under 8 AAC 85.352 and 8 AAC 85.355;

(3) meets the requirements of 8 AAC 85.353 during periods of travel;

(4) meets the requirements of 8 AAC 85.356 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.

The claimant in this case did not participate in reemployment services before the Division’s deadline because she did not receive the notice directing her to participate.

*There is a rebuttable presumption that a notice placed in the mail will be timely delivered. Rosser, Com. 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, Com. Dec. No. 9229240, March 17, 1993.*

The claimant’s testimony was credible and she has overcome the presumption that the notice was delivered timely. The claimant’s mail was frequently stolen and this was beyond her control.

The claimant learned of the requirement in the week ending June 15, 2019 and she attempted to participate in that week, but she was required in court. This circumstance was beyond the claimant’s control.

The claimant did not attempt to participate in the reemployment interview in the week ending June 22, 2019. She scheduled an interview in the week ending June 29, 2019, but did not attend. The claimant did not attempt to participate in the interview in the week ending July 6, 2019. The claimant’s failure to participate in the interview during those weeks was due to circumstances that were within her control, bus fare and child care. The claimant cannot be considered to have been available for work during the weeks ending June 22, 2019 through July 6, 2019.

#### DECISION

The redetermination issued on July 15, 2019 is **MODIFIED**. Benefits are **ALLOWED** for the weeks ending June 8, 2018 and June 15, 2019, if the claimant is otherwise eligible. Benefits remain **DENIED** for the weeks ending June 22, 2019 through July 6, 2019.

#### 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.

Dated and mailed on August 16, 2019.

Rhonda Buness, Appeals Officer