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**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 0348 **Hearing date:** April 29, 2020

**CLAIMANT:**

ROBERT THOMAS

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Robert Thomas None

**CASE HISTORY**

The claimant timely appealed a March 23, 2020 determination which denied benefits under Alaska Statute 23.20.378. The issue before the Appeal Tribunal is whether the claimant was available for suitable work.

**FINDINGS OF FACT**

The claimant established a claim for unemployment insurance benefits effective October 13, 2019. On February 24, 2020, the claimant filed a certification for the weeks ending February 15, 2020 and February 22, 2020. The claimant reported on the certification that he was not available for full-time work in those weeks. The claimant indicated that he did not have transportation to get to work.

The claimant’s unemployment benefits had recently been requested by the State of Pennsylvania unemployment program to satisfy a past overpayment in benefits from that program. Pennsylvania refused the claimant any portion of his benefits to provide for his basic needs. The claimant’s phone was disconnected. The claimant was without money for bus fare and this restricted his labor market to employers he could walk to from his residence.

The claimant lives in an area with few employers. There are financial businesses, banks and non-profits within walking distance, but the claimant does not believe those businesses have positions he would be eligible for. He stated the local Veteran’s Administration Hospital was within walking distance, but that he would have to walk through a very undesirable area to get there and he would not be willing to do so. There is a gas station within walking distance of the claimant’s residence, where the claimant previously worked.

During the weeks under review, the claimant applied for work with employers that were located across town, and contacted his seasonal employer about his expected return to work in Alaska in May 2020. The claimant did not search for work within walking distance of his residence.

The claimant’s sister loaned him money in March so he could reconnect his phone and have bus fare available. The claimant re-opened his claim for benefits on March 22, 2020.

**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.

# CONCLUSION

In Arndt v. State, DOL, 583 P2d 799, Alaska, September 22, 1978, the Alaska Supreme Court adopted a two-fold test for determining a claimant's availability for work. The court held:

*The test requires (1) that an individual claimant be willing to accept suitable work which he has no good cause for refusing, and (2) that the claimant thereby make himself available to a substantial field of employment.*

This decision has been codified in 8 AAC 85.350. That regulation holds that claimants must be available for five days in each week to accept suitable work and must be available for a substantial amount of full time employment. The claimant reported to the Division that he was not available for work because he did not have bus fare. He did not apply for work that was within walking distance during the period he did not have bus fare.

A person’s efforts to locate work are indicative of that person’s genuine desire to become employed. During the period under review, the claimant did not apply for work that he could accept, given his transportation limitation. For part of this period, the claimant did not have phone or computer access, which further restricted his ability to search for or accept work. The claimant has not established that he was available to a substantial labor market during the weeks under review.

The Tribunal concludes the claimant was not available for work during the period under review.

**DECISION**

The determination issued on March 23, 2020 is **AFFIRMED**. Benefits remain **DENIED** under 8 AAC 85.350 for the weeks ending February 21, 2020 through March 21, 2020.

**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 April 29, 2020

Rhonda Buness, Appeals Officer