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### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0373 **Hearing date:** May 4, 2020

**CLAIMANT:**

CHELSEA MOON

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Chelsea Moon None

#### CASE HISTORY

The claimant timely appealed an April 13, 2020 determination which denied benefits under 23.20.378. The issue before the Appeal Tribunal is whether the claimant is eligible for unemployment insurance benefits while engaged in self-employment.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective March 29, 2020. The claimant last worked for an employer February 27, 2020. Her claim for benefits is based on wages earned working for that employer. The claimant left that work in to pursue her business full time, as she was getting too busy to continue even part-time work. The claimant has invested considerable time and money in obtaining a real estate license and signing with a broker. The business was beginning to do well before being severely impacted in March 2020 because of the COVID-19 pandemic, which resulted in less people buying and selling homes and a sudden halt to home showings and open houses. The claimant applied for unemployment insurance benefits to assist in supporting herself.

The claimant estimated that she spent about 40 hours on work-related activities in the first week of her claim, the week ending April 4, 2020. They were not activities that could generate income, meeting with colleagues and information-gathering to understand the changes taking place in the market. After the first week, the claimant has spent minimal time on her business, only checking emails and occasionally meeting with colleagues.

When the claimant first filed for unemployment benefits, she held that she would not accept full-time work without giving up her business and she was unwilling to give up her business to accept work. She was not looking for full-time work with an employer. In mid-April, the claimant decided she should look for work outside the real estate business, since it is not clear how soon the market will rebound and allow her to earn a living. The claimant is currently completing an online college degree program in accounting and she is searching for work in that field. Although she would like to continue her business when possible, she is willing to accept full-time work with an employer. In mid-April, the claimant updated her resume and began actively looking for jobs online. The claimant did not register for work with the Division’s ALEXsys website.

#### 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….

**8 AAC 85.350 provides:**

 (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 Rader, 79H-33, May 4, the Commissioner of the Department of Labor and Workforce Development has previously held regarding self-employment:

 *In determining whether or not a self-employed individual is available for work several factors must be considered: (1) Availability for regular employment, (2) hours per week devoted to self-employment, (3) net income, (4) nature of regular employment, (5) whether he engages in self-employment during the course of regular employment, and (6) efforts to seek work in his regular line.*

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.*

The claimant in this case was unwilling to seek or accept full-time work with an employer when she established her claim. She changed her mind about accepting work with an employer in the week ending April 18, 2020 and began seeking full-time work.

The Tribunal finds the claimant was correctly denied regular unemployment insurance benefits under AS 23.20.378 and regulation 8 AAC 85.350 in the weeks ending April 4, 2020 and April 11, 2020, because she was not available for full-time work with an employer. The claimant changed her availability in the week ending April 18, 2020 after realizing that she may not be able to support herself with her self-employment for some time and began actively searching for work. The claimant has not registered for work and placed a résumé on the Division’s ALEXsys website, however the Division has relaxed that requirement to establish availability for work for claimants effective March 1, 2020, under guidance from the United States Department of Labor.

#### DECISION

The determination issued on April 13, 2020 is **MODIFIED**. Benefits remain **DENIED** for the weeks ending April 4, 2020 and April 11, 2020. Benefits are **ALLOWED** beginning with the week ending April 18, 2020, if the claimant is otherwise eligible.

#### 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 May 4, 2020.

 Rhonda Buness, Appeals Officer