****

**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 0621 **Hearing date:** June 22, 2020

**CLAIMANT:**

DONALD SLAUGHTER

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Donald Slaughter None

 **CASE HISTORY**

The claimant timely appealed a May 27, 2020 determination which denied benefits under AS 23.20.378. The issue before the Appeal Tribunal is whether the claimant was able to work and available for suitable work during a period of travel.

 **FINDINGS OF FACT**

The claimant resides in Sun City, Arizona and works on the North Slope. He established a claim for unemployment benefits effective April 5, 2020 when he was laid off due to business reasons related to the COVID-19 pandemic.

On May 6, 2020, the claimant drove with his wife to Fort Riley, Kansas, a two-day trip each way. The claimant traveled to visit his son who stationed there before his son is deployed by the military to combat overseas. The claimant was not searching for work during his travel, as he is attached to an employer and intends to return to that work when called. The claimant planned with his wife that if he were called to work while on the trip, he would immediately go to one of many major airports on the way and fly to Alaska to work, and his wife would continue the trip by car on her own.

The claimant returned to his residence on May 13, 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.

**8 AAC 85.353 provides:**

(a) The requirements of this section apply to any period during which a claimant travels outside the customary commutable area in which the claimant resides, unless the claimant travels while exempted from availability requirements under AS 23.20.378(a) or in connection with training approved under AS 23.20.382. For purposes of this section, a customary commutable area means an area where a claimant customarily commutes to and from work each day.

(b) A claimant is available for work each week while traveling only if the claimant is traveling to

 (1) search for work and is legally eligible to accept work in the area of travel;

 (2) accept an offer of work that begins no later than 14 days after the claimant's departure; or

 (3) establish or return to a residence immediately following the claimant's discharge from the armed forces.

(c) A claimant who travels in search of work must be legally eligible to accept work and make reasonable efforts to find work each week in the area of the claimant's travel, by

 (1) contacting in person an employment office;

 (2) making at least two in-person employer contacts;

 (3) registering in person with the local chapter of the claimant's union that has jurisdiction over the area of the claimant's travel; a claimant who has previously registered with the local union that has jurisdiction over the area of the travel is available for work if the claimant makes contacts as required by the union to be eligible for dispatch in the area of the travel; or

 (4) attending in person a pre-arranged job interview.

(d) A claimant is not available for work after the claimant travels for more than four consecutive calendar weeks to search for work. A claimant is not available for work after the claimant travels for more than seven days if traveling to

 (1) accept an offer or work that begins 14 days after the claimant’s departure; or

 (2) establish or return to a residence immediately following the claimant’s discharge from the armed forces.

# CONCLUSION

Alaska Statute 23.20.378 requires that claimants be available for work in order to be eligible for benefits. Regulation 8 AAC 85.353 applies to any period during which a claimant travels outside the area in which the claimant resides. The claimant was outside his area of residence during the weeks under review. Regulation 8 AAC 85.353(b) provides that a claimant who travels away from their area of residence during their customary workweek is considered available for work only if they travel for one of the three allowable reasons stated in section (c). The claimant did not travel for an allowable reason.

Under Regulation 8 AAC 85.350, a claimant must be available for work at least five working days of their customary workweek. The claimant was not available in his area of residence for five days in the weeks under review.

The claimant argued that he was available for work during the weeks under review because he could get on a plane and respond promptly to an offer of work at any point during his travel.

*The purpose of the Employment Security Act is to enhance the economic security of persons who are involuntarily unemployed. In order to fulfill this statutory objective, it is not unreasonable to require claimants to be within the area of their normal labor market during the regular workweek. If a claimant travels for reasons unrelated to his work search, he runs the risk of being unable to promptly respond to job offers. This risk clearly runs counter to the statutory purpose of enhancing the employment security of the unemployed. (3PA-84-28, Henderson v. Employment Security Division, January 7, 1988)*

*The Department “must abide by the parameters set by the legislature” in the language of a statute. Baisden, Com. Dec. 98 2003, November 5, 1998; Com. Dec. Hutchens, 97 0427, June 16, 1997; other cites omitted.*

*Regulations are subject to the same constructs as are statutes. Under the rules of statutory construction, words, if not specifically defined, are to be accorded their commonly accepted meaning. Gilheany, Com. Dec. 84H-UI-348, March 29, 1985.*

*Neither the Appeal Tribunal nor I have any jurisdiction to hold contrary to the clear wordage of the law. Scott, Com. Dec. 87H-EB-162, June 18, 1987.*

The claimant’s reason for is understandable, however it is not an allowable reason for travel. Although the claimant reasonably argued that he could respond promptly to a call to work from any airport, the wording in the travel regulation is clear, as are the facts in this case. The claimant did not travel for one of the allowable reasons and he was not available in his area of residence for five days in either week. As in Scott, the Tribunal must find the claimant’s benefits were properly denied.

 **DECISION**

The determination issued on May 27, 2020 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending May 9, 2020 and May 16, 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 June 24, 2020

 Rhonda Buness, Appeals Officer