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**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 0949 **Hearing date:** August 10, 2020

**CLAIMANT:**

LAURA A HANKS

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Laura Hanks None

**CASE HISTORY**

The claimant appealed a July 2, 2020 determination which denied benefits under AS 23.20.378. The issue is whether the claimant was able to work and available for suitable work during a period of travel or whether she was required to be available for work.

**FINDINGS OF FACT**

The claimant had work until mid-March when the Covid-19 pandemic when she was laid off. The claimant’s last day of work was March 17, 2020. Shortly thereafter she established a claim for unemployment insurance benefit effective March 15, 2020.

On June 15, 2020, the claimant travelled to Columbus, Ohio to care for her father. When she arrived he was still hospitalized. He was discharged to her. Thereafter, she set up continuing housekeeping services for him as well as physical therapy and other emergency services. When she returned to her home in Fairbanks, Alaska on July 4, 2020, he was again able to get around with the aid of a walker. There was no one else who could provide the immediate care her father needed.

**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.

**HB 308 UNEMPLOYMENT INSURANCE: BENEFIT QUALIFICATION AND WAITING WEEK DURING NOVEL CORONAVIRUS DISEASE OUTBREAK.**

(a) To the extent consistent with federal law, an insured worker who is otherwise qualified to receive a benefit under [AS 23.20](http://www.akleg.gov/basis/statutes.asp#23.20) (Alaska Employment Security Act) may not be disqualified for failure to comply with [AS 23.20.378](http://www.akleg.gov/basis/statutes.asp#23.20.378)(a) because of conduct by the insured worker or the employer of the insured worker related to an outbreak of novel coronavirus disease (COVID-19), including conduct involving:

(1) providing care, including medical care, to one or more persons

(2) preventing or limiting the spread of COVID-19; or

(3) preventing or limiting economic loss or harm.

(b) The protection of an insured worker under (a) of this section applies for a period of 120 days beginning on the effective date of this section or the date the insured worker applies for a benefit under [AS 23.20](http://www.akleg.gov/basis/statutes.asp#23.20), whichever is later.

**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(a) provides that the requirements of this section apply to any period during which a claimant travels outside the area in which the claimant resides. 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).

As stated above in the *Provisions* section of this decision, House Bill 308, passed by the Alaska Legislature and made retroactive to March 1, 2020, provides for the waiver of the requirement to be available for work under AS 23.20.378(a) under certain conditions during the COVID-19 pandemic including conduct providing care, including medical care, limiting the spread of Covid-19 and actions preventing or limiting economic loss or harm.

Furthermore, 8 AAC 85.353 (a) specifically provides that the travel 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)* (emphasis added).

The claimant in this case was unemployed due to the COVID-19 pandemic, and thus was directly impacted by the disease. The claimant’s reason for traveling to Ohio was to care for her ailing father.

The Appeal Tribunal considers House Bill 308, to extend to individuals who travel (see 8 AAC 85.353(a). The claimant in this case provided assistance to a family member in need of care.

By providing care to an individual, this Tribunal holds the claimant meets the modified availability while traveling requirements to be eligible for unemployment insurance benefits for the period in question.

**DECISION**

The determination issued on July 2, 2020 is **REVERSED.** Benefits are **ALLOWED** from weeks ending June 20, 2020 and thereafter so long as otherwise eligible.

**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 11, 2020

Michael Swanson,

Appeals Hearing Officer