

**APPEAL TRIBUNAL DECISION**

**Docket Number:** 20 1257 **Hearing Date:** September 16, 2020

**CLAIMANT:**

TANE SKULTKA

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Tane Skultka None

**CASE HISTORY**

The claimant timely appealed a July 30, 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 or whether the claimant was required to be available for work.

**FINDINGS OF FACT**

The claimant established a claim for unemployment insurance benefits effective March 15, 2020.

On July 9, 2020, the claimant left her area of residence at about 5:40 am to travel to California in search of work. The claimant had a place to stay in California at a family home. The claimant normally works in the tourism industry as an accountant. She believes there is more work in California since Alaska’s tourism industry has been hit hard by the effects of COVID-19 pandemic. She believed she could get a better idea of how things were going by visiting the area.

The claimant contacted potential employers during her travel, but only by phone, since the COVID-19 pandemic has prevented in-person applications at many places. The claimant would have stayed in California for an interview if she had been granted one. The claimant returned to her residence at about noon on July 18, 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.

**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.

**CONCLUSION**

Alaska Statute 23.20.378 provides that a claimant must be available for work each week in order to be eligible for benefits for that week.

Regulation 8 AAC 85.353 provides that the requirements of this section apply to any period during which a claimant travels outside the area in which the claimant resides. The regulation 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. The claimant stated she traveled to search for work, but she did not meet the requirements of the regulation to demonstrate reasonable work search efforts. The claimant contacted potential employers by phone only, which she could have done from her area of residence.

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 for work in her area of residence for five days in either of the weeks under review

The claimant argued that legislation passed by Congress and the Alaska Legislature in response to the COVID-19 pandemic was intended to pay benefits to persons in the claimant’s situation, and consideration should be given to the fact that in-person contacts are discouraged during the pandemic.

The Families First Coronavirus Response Act (Pub. L. 116-127), signed into law March 18, 2020, includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020 which provides for emergency flexibilities to states related to temporarily modifying certain aspects of their unemployment laws. The CARES Act of 2020, Public Law (Pub. L.) 116-136, signed into law on March 27, 2020, includes the Relief for Workers Affected by Coronavirus Act, The Act created the Pandemic Unemployment Assistance program which includes provisions for temporary coverage of individuals who have exhausted their entitlement to regular unemployment benefits and individuals who are not eligible for regular unemployment benefits, such as individuals who are self-employed or have limited recent work history. The federal legislation did not change the requirement of the regular unemployment insurance program that claimants to be able to work and available for a substantial amount of full-time work with an employer in order to be eligible for benefits, except for specific circumstances when a claimant is unable to work because of specific circusmstaces related to the COVID-19 pandemic.

On March 19, 2020 Alaska’s legislature passed House Bill 308 which made temporary changes to Alaska’s Unemployment compensation, which provides that claimants are not required to be available for work for a period if their circumstances are directly caused by the COVID-19 pandemic.

In Hughes v. Dept. of Labor, 3AN-16-07533 CI, the Superior Court held that the regulation that defines being available for work as “meeting the requirements of 8 AAC 85.353 during periods of travel,” is a reasonable and not arbitrary method of effectuating the purpose of the Act. There is no per se exclusion of benefits for traveling but rather an individualized inquiry as to the purpose and extent of the travel. If a claimant travels outside the area in which the claimant resides, there is no impediment to the continued receipt of benefits if the claimant is traveling for the purpose of seeking work, willing and able to work in the area to which the claimant travels, and makes in person contacts in furtherance of the claimant’s work search.

*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 did not travel for reason that can be allowed under AS 23.20.378 and 8 AAC 85.353. The claimant’s travel was not a direct result of COVID-19 pandemic, so the provisions of HB308 do no waive the claimant from the requirement to be available for work. The Tribunal finds the determination of the Division of Employment and Training Services correctly applied the law and regulation.

**DECISION**

The determination issued on July 30, 2020 is **AFFIRMED**. Benefits are **DENIED** for the weeks ending July 11, 2020 and July 18, 2020.

**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 by circumstances beyond the party's control. A statement of appeal rights and procedures is enclosed.

Dated and mailed on September 21, 2020.

Rhonda Buness, Appeals Officer