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**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 1432 **Hearing date:** October 13, 2020

**CLAIMANT:**

KEN SIFFERMAN

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Ken Sifferman None

**CASE HISTORY**

The claimant timely appealed an August 23, 2020 determination which denied benefits under Alaska Statute 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 and whether the claimant is eligible for a waiver of availability.

**FINDINGS OF FACT**

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

The claimant departed Ketchikan at 6:00 am June 29, 2020 to travel to Sitka with a layover in Juneau. The claimant had a medical appointment at Mt. Edgecumbe hospital at 10:00 am the next day. Reduced flight availability made it impossible for the claimant to travel to Sitka the same day and arrive in time for an appointment. The claimant had a procedure performed that was recommended by his medical care provider in Ketchikan. The medical procedure is available in Ketchikan, but local providers are not covered by the claimant health care coverage so he was referred to a covered facility, otherwise he would have had to pay for the entire procedure himself. The claimant returned to Ketchikan on July 2, 2020.

The claimant works as a customer service representative and is scheduled to work Friday through Monday. The claimant missed work on Monday, June 29, 2020 because of his travel. His appointment could not be arranged without him missing work on either Monday or Friday. The claimant tried to get other work from the employer that week by working a double shift, but none was available.

The claimant spoke with a business owner about possible work in Juneau during one of his layovers on the way to and from Sitka. He also spoke with a Juneau cab driver during a cab ride about the taxi and tour guide business. He did not know if the driver had any authority with the business to hire.

**PROVISIONS OF LAW**

**AS 23.20.378:**

(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. An insured worker is not considered available for work unless registered for work in accordance with regulations adopted by the department. An insured worker may not be disqualified for failure to comply with this subsection if

(1) the insured worker is not available for work because the insured worker . . .

(B) is traveling to obtain medical services that are not available in the area in which the insured worked resides, or, if a physician determines it is necessary, the insured worker is accompanying a spouse or dependent who is traveling to obtain medical services; and

  (2) a condition described in (1) of this subsection occurs during an uninterrupted period of unemployment immediately following a week for which the insured worker has filed a compensable claim, and work has not been offered that would have been suitable for the insured worker before the illness, disability, hunting, fishing, medical travel, jury service, or funeral attendance.

**8 AAC 85.010 provides:**

1. In this chapter, unless the context requires otherwise, . . .

(8) "compensable claim" means a continued claim for which a money benefit is payable or has been paid, or for which a credit against an overpayment is allowable or has been allowed;

**8 AAC 85.350 provides:**

1. 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.

**CARES Act of 2020, Public Law 116-136 Sec 2104**

1. FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.— Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents’ allowances) payable for any week shall be equal to— (A) the amount determined under the State law (before the application of this paragraph), plus (B) an additional amount of $600 (in this section referred to as ‘‘Federal Pandemic Unemployment

# CONCLUSION

Alaska Statute 23.20.378 holds that a claimant must be available for work and able to work in order to be eligible for benefits. The statute holds that individuals may not be disqualified for failure to comply with the requirement to be available for work if the claimant is not available because they are traveling to obtain medical services that are not available in the area in which the claimant resides. The must not miss work during the medical travel. Because the claimant missed work, he is not eligible for a waiver of the requirement to be available.

The claimant did not travel to search for work, but he did speak with two parties about possible work in Juneau during his travel. The claimant’s conversation about the taxi and tour business with a taxi driver who may not have authority to hire is not an in-person employer contact.

*In Degeorge, Com. Dec 10 1777, October 12, 2010, the commissioner found that a claimant who worked part time and missed one work shift due to illness in the week was not eligible for unemployment benefits for that week because she was not available during the period the employer needed her to work. Furthermore, the commissioner found that “unemployment benefits are only payable on a weekly basis and are not broken down to a daily formula. Accordingly, benefits must be denied the claimant the entire week in question.”*

*It is understandable that the claimant would believe that he was able and available for work for a normal work week, and thus eligible for benefits in the week at issue, however, he did have to decline at least a substantial part of a work shift during that week because of a medical appointment. Under the statute and regulation, he cannot be considered fully able and available for work if he is ill or medically disabled. We equate missing work due to medical appointments the same as an illness. As the Tribunal noted however, if a claimant becomes ill or disabled while in compensable claim status, there is a waiver of availability for up to six weeks of the illness. That waiver is nullified, however, if the claimant has to refuse an offer of new work or to work an existing job. Swetzof, Com. Dec. 12-3121, March 6, 2013.*

Applying Degeorge, the Tribunal must find that the claimant was not available for work in the week under review. Because he was not available for work and was not waived from the requirement to be available for work, the claimant is not eligible for benefits.

The claimant argued that he should still be eligible for the additional $600 weekly payment provided under the Federal Pandemic Unemployment Compensation. The CARES Act of 2020, Public Law 116-136, section 2104, signed into law on March 27, 2020, temporarily provides an additional $600 weekly payment to claimants who are eligible for a weekly unemployment benefit. The federal code requires that a claimant must be eligible for a benefit under the requirements of the laws of the state in which the claimant is claiming regular unemployment benefits in order to eligible for the additional weekly benefit.

Because the claimant is not eligible for a benefit from the State’s regular unemployment benefits in the week under review, he is not eligible to receive the additional payment for that week.

**DECISION**

The determination issued on August 23, 2020 is **AFFIRMED**. Benefits are **DENIED** for the week ending July 4, 2020, if the claimant is 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 October 15, 2020.

Rhonda Buness, Appeals Officer