**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 1930 **Hearing date:** January 28, 2021

**CLAIMANT:**

SARAH HEINTZ

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Sarah Heintz None

#### CASE HISTORY AND FINDINGS OF FACT - TIMELINESS

The claimant filed an appeal against a redetermination issued August 22, 2020, which denied benefits under AS 23.20.378 on the grounds that the claimant was not available for work. The Division mailed the determination to the claimant’s address of record on August 11, 2020. The claimant’s appeal was filed on October 21, 2020, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant does not recall receiving the determination by mail. She has had problems receiving mail which has been properly addressed to her and yet was returned to the sender on more than on occasion. The claimant was aware that her benefits were denied because she was advised by phone about the denial during one of many calls she made to the Division. She recalls being told she had the right to appeal the decision to deny her benefits, but she was not told there was a time limit to file an appeal. No representative offered to take the claimant’s appeal until October 21, 2020.

#### PROVISIONS OF LAW - TIMELINESS

**AS 23.20.340 provides in part;**

 (e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant shows that the application was delayed as a result of circumstances beyond the claimant's control.

(f) If a determination of disqualification under AS 23.20.360, 23.20.362, 23.20.375, 23.20.378 ‑ 23.20.387, or 23.20.505 is made, the claimant shall be promptly notified of the determination and the reasons for it. The claimant and other interested parties as defined by regulations of the department may appeal the determination in the same manner prescribed in this chapter for appeals of initial determinations and redeterminations. Benefits may not be paid while a determination is being appealed for any week for which the determination of disqualification was made. However, if a decision on the appeal allows benefits to the claimant, those benefits must be paid promptly.

**8 AAC 85.151 provides in part;**

1. An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant’s last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. However, the 30-day period may be extended for a reasonable time if the claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

#### CONCLUSION - TIMELINESS

An appellant has the burden to establish some circumstance beyond the appellant’s control prevented the timely filing of the appeal.

*When a claimant approaches an unemployment insurance representative for instructions, it is the responsibility of that representative to provide complete and accurate information regarding the claimant’s request. Murphy, Com. Dec. No 87H-UI-283, September 29, 1987.*

*We find no material errors in the Tribunal's findings. However, we have previously ruled in Murphy, Com. Decision 87H-UI-283, Sept. 29, 1997, and other cases, that a claimant may rely on the instructions received from an authorized representative of the Employment Security Division. Such instructions may supersede instructions given in written form, such as claimant information handbooks or determinations depending on the circumstances. Vassar, Com. Dec. 96 0614, May 15, 1996.*

The claimant was in contact with Division representatives and she was made aware that her benefits were denied but she was not told that she only had 30 days to file an appeal.

Because the claimant did not get complete information from the representatives helping her, the Tribunal concludes the claimant’s delayed was appeal was due to circumstances beyond her control.

#### DECISION - TIMLINESS

The claimant’s appeal from the notice of redetermination issued on August 22, 2020 is **ACCEPTED** as timely filed.

**CASE HISTORY – ABLE & AVAILABLE**

The redetermination issued August 22, 2020 denied benefits under Alaska Statute 23.20.378. The issue before the Appeal Tribunal is whether the claimant is able to work and available for suitable work.

 **FINDINGS OF FACT - ABLE & AVAILABLE**

The claimant established a claim for unemployment insurance benefits effective July 19, 2020. The claimant had quit her last work when the employer reduced her from 4-5 hours per day to one hour per day, filling in while the full-time receptionist was at lunch. The claimant was only earning $15 per day. The full-time receptionist was leaving, and the employer wanted the claimant to take the full-time position. The claimant felt full-time work at that job would be too stressful for her, so she quit. The claimant has a medical condition that is made worse with stress.

The claimant’s doctor initially submitted a medical report that stated the claimant was unable to work full-time. The doctor then submitted a letter clarifying that the claimant was able to work, but needs work that does not require multitasking, as this can be overwhelming for her due to her medical condition.

At the time she applied for unemployment benefits, the claimant told a Division representative that she was not available for full-time work because she needed to provide care for her son. The claimant’s son is 7-years old and requires specialized care. The claimant’s mother is available to care for the claimant’s son full-time except when she works, which is usually part-time, short-term jobs. The claimant’s retired step-father is also available to provide child care, and the claimant has a trusted friend who is available weekdays to care for the claimant’s son.

The claimant stated that she prefers part-time work, and that she would be willing to work from home, but she is not searching for work to perform from home. The claimant is currently searching only for church or missionary work, which is the least stressful work for her, and the work for which she is most suited. The claimant went on a missionary trip in for a week in November. Her room and board and airfare were paid for by sponsors, but the claimant was not paid for her work.

 **PROVISIONS OF LAW - ABLE & AVAILABLE**

**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. 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

(A) is ill or disabled;

(B) is traveling to obtain medical services that are not available in the area in which the insured worker 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;

(C) resides in the state and is non-commercially hunting or fishing for personal survival or the survival of dependents;

(D) is serving as a prospective or impaneled juror in a court; or

(E) is attending the funeral of an immediate family member for a period of no longer than seven days; 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.

(b) A waiver of disqualification for an illness or disability under (a)(1) of this section may not exceed six consecutive weeks.

**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.

# CONCLUSION - ABLE & AVAILABLE

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.*

This decision has been codified in 8 AAC 85.350. The burden is on the claimant to establish the first part of the test. The burden is on the Alaska Division of Employment and Training Services (DETS) to establish there is not a substantial field of employment remaining if it intends to deny benefits.

The claimant in this case established that she had adequate childcare arrangements to care for her son full-time if necessary.

The claimant is only looking for and willing to accept church and missionary work. The claimant considered that she worked in November, however this was volunteer work and the claimant was not paid. The claimant has not established that she is seeking work other than church volunteer work, which does not meet the requirement that she be available for full-time work in order to be eligible for benefits.

*Alaska law does not specify any evidentiary test which a Hearing Officer must use in considering the evidence brought before him. However, in prior cases, it has been held that a Hearing Officer must base his decision on a "preponderance of evidence." See e.g. In re Patterson, Com. Dec. 86H-UI-233, 1C Unemp. Ins. Rptr. (CCH), AK ¶8121.28, 10/16/86. "Preponderance of evidence" has been defined as "that evidence which, when fairly considered, produces the stronger impression, and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto." In re Adelman, Com. Dec. 86H-UI-041, 1C Unemp. Ins. Rptr. (CCH), AK ¶8121.25, 5/10/86, citing S. Yamamoto v. Puget Sound Lumber Co., 146 P.861, 863 (WA).*

The claimant quit work rather than accept a full-time position, she prefers part-time work and she is only searching for and willing to accept volunteer church work. The Tribunal must conclude that the claimant is not available for full-time work, based on the preponderance of evidence.

 **DECISION - ABLE & AVAILABLE**

The redetermination issued on August 22, 2020 is **AFFIRMED**. Benefits remain **DENIED** beginning with the week ending July 25, 2020 and continuing until the claimant makes herself available for full-time work.

#### 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 February 4, 2021.

 Rhonda Buness, Appeals Officer