**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 1934 **Hearing date:** February 2, 2021

**CLAIMANT:**

DEREK THOMAS

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Derek Thomas None

 **CASE HISTORY**

The claimant timely appealed an October 16, 2020 redetermination 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.

 **FINDINGS OF FACT**

The claimant established a claim for unemployment insurance benefits effective May 17, 2020. The claimant had stooped working two weeks earlier because he was experiencing shortness of breath, chest pain, headache and lightheadedness. The claimant went to the emergency room for care. He returned to the emergency room for follow up on May 26, 2020. He was told by his doctor that all of his cardiac tests were negative as was his COVID-19 test. The claimant was not told that he should not return to work. The doctor told the claimant he should be fine, but she wanted to refer him to a clinic. The claimant was seen in the clinic and the doctor there told the claimant that he should be fine, but he wanted to refer the claimant to a cardiac care facility for clearance. It took considerable time to get an appointment at that facility, and the claimant was seen there and medically cleared to return to work on September 28, 2020.

The claimant held that he was feeling better by the time he established his claim for benefits and he felt he could return to work at that point. He had checked with his last employer, but they did not have any work available for him. The claimant began searching for other work, searching online for security work, parts delivery and office jobs.

The claimant was instructed to provide a medical release to work when he applied for benefits. A Division representative told the claimant that he would receive benefits for weeks previously filed when he provided the release. The Division allowed the claimant’s benefits beginning with the next week after he received clearance to return to work.

 **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. 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

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 felt better, was willing to return to work, and had attempted to return to work at the time he established his claim for benefits. He had not been told that he could not return to work at any point.

The Division’s Benefit Policy Manual, AA 235.05 Health of Physical Condition, holds as follows regarding the requirement to provide a medical release to work:

*A physician's statement should be requested when:*

*• the claimant is limiting availability because of a disability, or*

*• the claimant has been previously disqualified on the basis of a disability and now claims ability to work, or*

*• the claimant left the last employment because of an illness or disability.*

*A physician's statement is not necessary when:*

*• the claimant had a short-term illness but is now recovered, or*

*• the claimant has made a valid search for work following an illness or injury, or*

*• although the claimant has a disability, no physician has ever said the claimant was unable to work.*

*Example: A claimant took time off from work to recover from an illness. When he called the employer to return to work, the employer had no work for him. The Tribunal held that Mr. Hambrick's calling the employer to offer to return to work provided such proof of his ability to work that a physician's statement was unnecessary. (97 1271, June 13, 1997)*

The claimant in this case did leave his last work due to an illness, but he was not told to stay off work and he attempted to return to the work before he established his claim for benefits, similar to the example in the Division’s policy manual. Because the claimant demonstrated he was willing and able to return to work before he established his claim, it is not reasonable to deny the claimant’s benefits while he was waiting for an appointment to be cleared by a third provider.

The Tribunal finds the claimant was able to work from the beginning of his claim.

 **DECISION**

The redetermination issued on October 16, 2020 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending May 23, 2020 through October 3, 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 February 5, 2021

 Rhonda Buness, Appeals Officer