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### APPEAL TRIBUNAL DECISION

**Docket number:** 21 0449 **Hearing date:** August 11, 2021

**CLAIMANT:**

PATRICK ELISOFF

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Patrick Elisoff None

#### CASE HISTORY

The claimant timely appealed a March 13, 2021 redetermination which denied benefits under AS 23.20.378. The issue before the Appeal Tribunal is whether the claimant was available for work.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective January 10, 2021.

On February 12, 2021, the Division mailed a notice to the claimant’s address of record, notifying the claimant that he was required to participate in reemployment services. The notice advised the claimant to schedule and attend a telephonic reemployment eligibility assessment interview and complete any assigned activities by March 5, 2021, or benefits would be denied.

The claimant received the notice. The claimant does not have access to a computer. He tried calling the phone number printed on the notice for assistance and he reached the Division’s claim center. The claim center representatives the claimant spoke with did not know what the claimant was asking about and the claimant was hung up on at one point.

The claimant continued to call the claim center until he reached a representative who gave him another number to call for assistance with the reemployment services. The claimant completed the reemployment requirements during the week ending March 13, 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 85.355:**

The director may review a claimant's registration for work and availability for work at any time during the benefit year. As part of the review, the director shall consider the claimant's training, experience, length of unemployment, plan for obtaining work, barriers to reemployment, and work prospects. On the basis of the review, the director may assign to the claimant new suitable occupation codes, change the claimant's registration for work, assign the claimant to reemployment services or instruct the claimant to make independent attempts to find work that are appropriate for the occupation and labor market. If the claimant fails without good cause to participate in the review, participate in reemployment services as directed by the director, or follow instructions of the division to help the claimant find suitable work, the director shall determine the claimant was not available for work.

**8 AAC 85.357 provides:**

(a) A claimant is not available for work for any week in which the claimant fails to participate in reemployment services if the claimant has been determined by the director likely to exhaust regular benefits and need reemployment services, unless the claimant has

(1) completed the reemployment services; or

1. has good cause under (b) of this section for failure to participate in the reemployment services.

(b) The director shall find that a claimant has good cause for failure to participate in reemployment services or related services under (a) of this section if the cause would lead a reasonable and prudent person not to participate in those services and the claimant took the actions that a reasonable and prudent person would take in order to participate. A claimant no longer has good cause when the cause preventing participation ends. Good cause includes

(1) circumstances beyond the claimant's control;

(2) circumstances that waive the availability for work requirement in AS 23.20.378;

(3) attendance at training approved under AS 23.20.382 and 8 AAC 85.200; and

(4) referral to reemployment services that the director determines was made incorrectly.

# CONCLUSION

Regulation 8 AAC 85.357, above, holds that a claimant is not available for work in any week in which the claimant fails to participate in reemployment services, unless the failure to participate is caused by circumstances beyond the claimant’s control.

The claimant in this case received the notice of the requirement to participate in reemployment services. The claimant tried to get assistance to complete the services, but he was directed to call the claim center where representatives did not know what the claimant needed to do.

*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.*

The claimant continued to call until he was directed to a number where he was assisted. The Tribunal finds it was outside of the claimant’s control to complete the services before the Division’s deadline because the claimant was unable to get proper information to complete the services. The claimant completed the services as soon as could be expected under the circumstances.

The Tribunal finds the claimant had good cause for his failure to complete reemployment services and he may be considered to have been available for work in the week ending March 6, 2021.

#### DECISION

The determination issued on March 8, 2021 is **REVERSED**. Benefits are **ALLOWED** for the week ending March 6, 2021, 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 August 19, 2021.

Rhonda Buness, Appeals Officer