

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 0836 **Hearing date:** September 23, 2021

**CLAIMANT:**

CALEB CANNADY

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Caleb Cannady None

#### CASE HISTORY

The claimant timely appealed an April 23, 2021 determination which denied benefits under AS 23.20.378. The issue before the Appeal Tribunal is whether the claimant was available for work while participating in self-employment.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective November 29, 2020. The claimant had retired from his previous work and he invested his retirement fund in a fishing boat. The claimant advised the Division of his self-employment from the beginning of his claim.

On April 19, 2021, the claimant advised the Division that he was not willing to accept work from an employer because he was spending all his time getting his boat ready for the summer fishing season. The claimant stopped filing for benefits after the week ending April 10, 2021.

#### PROVISIONS OF LAW

**AS 23.20.378 provides, in part:**

(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 provides:**

(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

Regarding self-employment, the Commissioner of Labor has previously held:

*In determining whether or not a self-employed individual is available for work several factors must be considered: (1) Availability for regular employment, (2) hours per week devoted to self-employment, (3) net income, (4) nature of regular employment, (5) whether he engages in self-employment during the course of regular employment, and (6) efforts to seek work in his regular line. Rader, 79H-33, May 4, 1979*

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.*

The claimant in this case was not available for full-time work with an employer beginning with the week ending April 24, 2021 because he was working full-

time to get his boat ready for fishing season. He had stopped filing for benefits at that time.

#### DECISION

The determination issued on April 23, 2021 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending April 24, 2020 through September 18, 2021.

#### 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 September 28, 2021.

Rhonda Buness, Appeals Officer