

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 1096 **Hearing date:** December 7, 2021

**CLAIMANT:**

CONTESSA SMETHERS

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Contessa Smethers None

**CASE HISTORY**

The claimant timely appealed a June 10, 2021 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.

**FINDINGS OF FACT**

The claimant established a claim for unemployment insurance benefits effective March 22, 2020.

The claimant works as a personal care attendant in client’s homes. In March 2021, the claimant was assigned a new client and she spent one hour meeting and getting to know the new client. The claimant was scheduled to work 15 hours per week for the client, during day shift hours. After meeting the client, the claimant learned her young son had been abused. Starting March 15, 2021, the claimant was required to schedule multiple appointments every week for her son to see counselors and medical doctors, and meet with police and social workers. The claimant was unable to schedule the necessary appointments, sometimes as many as five appointments in one day, with a set work schedule during the day.

The claimant advised the employer she could accept night and swing shift work any time. The claimant had previously worked those hours. Additionally, the claimant contacted the employer each week to let them know what day shift hours she was available that week, working around her son’s appointments. The claimant was not allowed to place her son in daycare or in school during the period under review. Only the claimant’s mother and a neighbor could be trusted to care for the claimant’s son initially. Both were available to care for the claimant’s son any time during the period under review. The claimant returned to her regular work schedule after May 1, 2021.

**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 established that she was willing to accept scheduled night or swing shift work, as well as work during the day that did not conflict with her son’s required appointments. The claimant has provided PCA services during night and evening shifts in the past. The Division has not established that there was not a substantial field of employment available to the claimant while she temporarily restricted her day shift availability.

The Tribunal concludes that the claimant was available for work during the period under review.

**DECISION**

The determination issued on June 10, 2021 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending March 13, 2021 through May 1, 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 December 15, 2021.

Rhonda Buness, Appeals Officer