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### APPEAL TRIBUNAL DECISION

**Docket Number:** 21 1271 **Hearing Date:** December 14, 2021

**CLAIMANT:**

SOOLETALA TIMOTEO

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Sooletala Timoteo None

#### CASE HISTORY

The claimant timely appealed a June 7, 2021 determination which denied benefits under AS 23.20.378. The issue before the Appeal Tribunal is whether the claimant met work availability requirements of the law.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective April 4, 2021. On May 7, 2021, the Division of Employment and Training Services mailed a notice to the claimant’s address of record, notifying the claimant that she was required to participate in reemployment services. The notice advised the claimant to schedule and attend an in-person reemployment eligibility assessment interview and complete any assigned activities by Friday, May 28, 2021, or benefits would be denied.

The claimant received the notice and began calling the number provided on the notice to set up an appointment for her reemployment eligibility assessment interview. The phone was not answered. The claimant discovered that she could register on line for an interview. The first one available was on Thursday, June 3, 2021. She reserved that date for her interview. The claimant did not get a call on the date of the interview. She called and the phone was answered. Her interview was conducted on June 4, 2021.

#### PROVISIONS OF LAW

**AS 23.20.378 provides in part:**

1. 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.

**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;](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E351'%5d/doc/%7b@1%7d?firsthit)

(2) makes independent efforts to find work as directed under 8 AAC [85.352](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E352'%5d/doc/%7b@1%7d?firsthit) and 8 AAC [85.355;](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E355'%5d/doc/%7b@1%7d?firsthit)

(3) meets the requirements of 8 AAC [85.353](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E353'%5d/doc/%7b@1%7d?firsthit) during periods of travel;

(4) meets the requirements of 8 AAC [85.356](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E356'%5d/doc/%7b@1%7d?firsthit) 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 attempted to reach the Division by telephone for an interview appointment. She finally arranged one through the Internet. She took the first one available. It was beyond her control to arrange an interview before the deadline due to the phone not being answered and then the first available interview appointment after the deadline set for completing the interview.

Therefore, a circumstance beyond her control prevented her timely completion of the assessment interview. Good cause is established for the late interview.

#### DECISION

The determination issued on June 7, 2021 is **REVERSED**. Benefits are allowed for the week ending May 29, 2021, if the claimant is otherwise eligible.

#### 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 December 16, 2021.

Tom Mize

Appeals Officer