
### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1542 **Hearing date:** January 25, 2022

**CLAIMANT:**

JOSEPH BARNETT

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Joseph Barnett Non

#### CASE HISTORY

The claimant timely appealed a July 23, 2021 determination which denied benefits under Alaska Statute 23.20.505. The issue before the Appeal Tribunal is whether the claimant is unemployed.

#### FINDINGS OF FACT

The claimant established an unemployment insurance claim year effective April 26, 2020.

The claimant worked with the Division of Vocational Rehabilitation to start a business. In the week ending May 8, 2021 he received grant money and worked 40 hours that week on start-up tasks for his business. The claimant had no sales until mid-July 2021.

#### PROVISIONS OF LAW

**AS 23.20.505. Unemployment defined.**

1. An individual is considered "unemployed" in a week during which the individual performs no services and for which no wages are payable to the individual, or in a week of less than full-time work if the wages payable to the individual for the week are less than one and one-third times the individual's weekly benefit amount, excluding the allowance for dependents, plus $50.

**8 AAC 85.010. Definitions.**

1. In this chapter, unless the context requires otherwise,

(15) "partially unemployed individual" means an individual who is working less than the individual's customary full-time hours for his or her regular employer and whose wages from that employer during a particular week are less than one and one-third times the individual's weekly benefit amount, excluding the allowance for dependents, plus $50;

#### CONCLUSION

The Division held the claimant was not eligible for benefits in the week under review because he was not unemployed or partially unemployed according to the statute and regulation cited above.

The claimant reported that he worked 40 hours on his own business during the week, having just received a grant to get the business going.

In Dunbar, Com. Dec. No. 94 7970, August 1, 1995, the Commissioner of Labor stated, in part:

 *Alaska Statute 23.20.505 specifies that a claimant is not "unemployed" in a week in which he works full-time or has earnings that are more than one and one-third times his weekly benefit amount, excluding the allowance for dependents, plus $50. The Courts have ruled that self-employment is also to be considered in deciding whether a person is "unemployed" in Wool v. Employment Sec. Div., No. 4FA-87-2234 Civ. (Alaska Super. Ct. 4th J.D., Jan. 10, 1989.)*

*In his appeal hearing the claimant testified that he was working approximately 40 hours per week as a commissioned real estate agent, but argued he was not an employee. In an earlier statement to the employment service office (exhibit 6) he indicated he was working 40 to 50 hours per week. The statute makes no distinction between working in one's own business or working for an employer. If the claimant is employed full-time during a week, he is not eligible for benefits. If the total hours worked in a week is full-time, usually meaning 40 hours or more, then the claimant cannot qualify as an "unemployed" individual and is not eligible for benefits.*

Considering the definitions provided in the statute and regulations and the precedent decisions of the Commissioner and the Court, the Tribunal finds the claimant’s circumstances in the week under review establish that he was not unemployed or partially unemployed because he worked 40 hours at his new business. The claimant’s benefits were properly denied for the week under review.

#### DECISION

The determination issued on July 23, 2021 is **AFFIRMED**. Benefits remain **DENIED** for the week ending May 8, 2021.

#### 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 January 31, 2022.

 Rhonda Buness, Appeals Officer