



APPEAL TRIBUNAL DECISION

Docket number: 21 0948 **Hearing date:** November 9, 2021

CLAIMANT:

Louise Angaiak

CLAIMANT APPEARANCES:

Louise Angaiak

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a May 18, 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 28, 2021. She last worked on March 26, 2021, as a transitional housing coordinator. She quit work to move from Bethel to Palmer, which she did on April 14, 2021.

In early March 2021, the claimant was advised there might be some complications with her pregnancy. However, those issues were resolved before she quit work. By the end of March, the claimant had no work restrictions.

From March 26, 2021 through April 14 2021, the claimant was packing her home and getting ready to move to Palmer. The claimant believed she probably could have gotten ready to move and continued working. She was unsure why she decided to quit work several weeks before her departure date. The claimant believed she started applying for jobs in Palmer prior to leaving Bethel.

Once the claimant arrived in Palmer, she was immediately available for full time work. She applied for positions mainly in office administration and clerical related fields.

The claimant gave birth to her child on May 26, 2021, without complications. She was advised to refrain from work and take time to recuperate for four to six weeks postpartum.

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

AS 23.20.378 provides that to be eligible for a week of unemployment, a claimant must establish that she is able to work and available for suitable full-time work.

A Hearing Officer must base his decision on a "preponderance of evidence." See e.g. Patterson, Comm'r Dec. 86H-UI-233, 1C Unemp. Ins. Rptr. (CCH), AK ¶8121.28, 10/16/86. "Preponderance of evidence" has been defined as "that evidence which, when fairly considered, produces the stronger impression, and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto." Adelman, Comm'r. Dec. 86H-UI-041, 1C Unemp. Ins. Rptr. (CCH), AK ¶8121.25, 5/10/86, citing S. Yamamoto v. Puget Sound Lumber Co., 146 P. 861, 863 (WA).

The claimant quit her job two weeks before she relocated to Palmer to get packed and ready to move. She chose not to work prior to her departure. Therefore, it is determined she was not available for full time work prior to relocating.

A claimant is considered available for work if the claimant is available for at least five working days in the week to respond promptly to an offer of suitable work. For the purposes of unemployment insurance, a week begins on Sunday and ends on Saturday.

The claimant relocated to Palmer on Wednesday, April 14, 2021. Therefore, she was not available for full time work in Palmer for at least five working days in the week she relocated.

Once the claimant relocated to Palmer, she was willing and able to work. She also made reasonable efforts to find work. Therefore, she met the eligibility requirements for availability once she was located in Palmer for five full days of the week.

However, the claimant gave birth to her baby on May 26, 2021, which raises the question of whether she qualified for a waiver of availability. There was nothing in the hearing record to establish a determination on the claimant's eligibility for a waiver of availability had been issued.

DECISION

The determination issued on May 18, 2021 is **MODIFIED**. Benefits remain **DENIED** for the weeks ending April 3, 2021 through April 17, 2021. Benefits are **ALLOWED** for the weeks ending April 23, 2021 through May 22, 2021, if otherwise eligible.

The matter of the claimant's availability for work and her potential eligibility for a waiver of availability after May 26, 2021 is **REMANDED** to the Unemployment Insurance office for investigation and the issuance of a determination, as deemed necessary.

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 November 10, 2021

Kimberly Westover

Kimberly Westover, Hearing Officer