



APPEAL TRIBUNAL DECISION

Docket number: 21 1260 **Hearing date:** December 13, 2021

CLAIMANT:

DEBRA FANNIN

CLAIMANT APPEARANCES:

Debra Fannin

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a June 10, 2021 determination which denied benefits under AS 23.20.378. The issue before the Appeal Tribunal is whether the claimant was available for work.

FINDINGS OF FACT

The claimant's customary occupation is as a nurse case manager. She worked for her prior employer from home. The claimant is only looking for work that she can do from home because she has a profound intolerance to vaccinations and is not able to take the COVID-19 vaccine. The claimant has been applying for various positions both in Alaska and in other states that will allow her to work from home. However, the claimant does not have a compact license to work as a nurse in other states. She is also willing to work in customer service, and any other clerical or phone related positions she could do from home.

The claimant decided to start a business raising chickens and sheep. When she initially started working her business, she worked more hours doing some maintenance and building pallet walls. Her hours varied and were solely within her discretion. Some weeks she worked full time, but other weeks she worked fewer hours. She did not have any income from this preliminary work.

The claimant can feed the animals in the morning and work a regular full-time shift. She can work the care for the animals around a full-time job, and her daughter lives just a few minutes down the road who can also help with the animals when needed. The claimant can work any days of the week and any hours during the day if she can do the job from home.

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.

HB 308 UNEMPLOYMENT INSURANCE: BENEFIT QUALIFICATION AND WAITING WEEK DURING NOVEL CORONAVIRUS DISEASE OUTBREAK.

- (a) To the extent consistent with federal law, an insured worker who is otherwise qualified to receive a benefit under [AS 23.20](#) (Alaska Employment Security Act) may not be disqualified for failure to comply with [AS 23.20.378\(a\)](#) because of conduct by the insured worker or the employer of the insured worker

related to an outbreak of novel coronavirus disease (COVID-19), including conduct involving:

- (1) providing care, including medical care, to one or more persons
- (2) preventing or limiting the spread of COVID-19; or
- (3) preventing or limiting economic loss or harm.

Sec. 4. This Act is repealed April 1, 2021.

CONCLUSION

The Alaska legislature passed HB308 in response to the COVID-19 pandemic and it was signed into law on March 26, 2020. The temporary provision held that a claimant can be waived from the requirement to be available for work if their unavailability is a direct result of the COVID-19 pandemic. The provision expired on April 1, 2021.

The claimant has established that her self-employment would not preclude her ability to work full time for an employer. The claimant can do most of the necessary duties of the farm before or after a regular work shift. Furthermore, she can get help from family if necessary. Therefore, the claimant's self-employment is not a significant impediment to her availability for full time work.

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.

However, the claimant's need to work only from home does create a serious limitation to her work field. 8 AAC 85.350 requires claimant's to be available for a substantial field of employment. Eliminating all employment that requires the claimant to report to work in person precludes a substantial number of employment opportunities. This conclusion is further supported by the claimant's inability to secure any work over a period of many months even with her skills and training. Therefore, the claimant has not shown that she is available for a substantial field of employment at this time.

DECISION

The determination issued on June 10, 2021 is **AFFIRMED**. Benefits are **DENIED** beginning with the week ending May 29, 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 December 17, 2021.

Kimberly Westover

Kimberly Westover, Appeals Officer