



APPEAL TRIBUNAL DECISION

Docket number: 21 1313 **Hearing date:** December 22, 2021

CLAIMANT:

NERY WHITE

CLAIMANT APPEARANCES:

Nery White

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a June 25, 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 April 11, 2021.

The claimant worked as a manager for JC Penney. On or about April 9, 2021, the claimant's spouse tested positive for COVID-19. The claimant immediately contacted her supervisor. The supervisor told the claimant that she needed to get tested and quarantine. The claimant's initial test came back negative. She called her supervisor again to report her test status. However, the claimant was experiencing many of the COVID-19 symptoms and continued to quarantine.

On April 20, 2021, the claimant tested again and this time the test was positive for COVID-19. The claimant submitted paperwork to JC Penney asking to be paid for the weeks as she was told she might qualify for some additional leave payments if she tested positive for COVID. The claimant cannot recall if she was paid for that time or not.

The claimant returned to work for JC Penney on April 30, 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.

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 affective April 1, 2021, and the requirements of AS 23.20.378 were once again applicable for all weeks thereafter; regardless, of whether the claimant was impacted by the COVID-19 pandemic.

Alaska Statute 23.20.378 holds that a claimant must be able to work and available for work to be eligible for benefits for a week of unemployment. The

statute provides a waiver for certain medical situations during a continuous period of unemployment for which the claimant was in compensable status immediately prior to the illness. However, in this case, the claimant became unemployed due to quarantine and a COVID-19 diagnosis, and she was not in compensable status immediately prior to the period of illness, which precludes the possibility of a waiver.

In Scott, Com. Dec. 87H-EB-162, June 18, 1987, the Commissioner held in part:

Neither the Appeal Tribunal nor I have any jurisdiction to hold contrary to the clear wordage of the law.

There was no question the claimant was impacted by the COVID-19 pandemic. Unfortunately, she did not qualify for any potential waivers, and she did not meet the availability requirement of AS 23.20.378.

DECISION

The determination issued on June 25, 2021 is **AFFIRMED**. Benefits are **DENIED** for the weeks ending April 17, 2021 through April 24, 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 December 23, 2021

Kimberly Westover

Kimberly Westover, Appeals Officer