**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 2136 **Hearing date:** April 20, 2022

**CLAIMANT:**

TAYLOR HIGHT

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Taylor Hight None

 **CASE HISTORY**

The claimant timely appealed an October 8, 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 October 3, 2021. He had last worked September 27, 2021 and had a planned knee surgery on September 29, 2021. The claimant was released for work after his surgery, with a restriction against driving and a requirement to use crutches for mobility.

The claimant’s usual work duties as a direct support professional required him to drive a car to pick up clients with disabilities and take them to appointments and out in the community to assist with their work and social goals. The claimant also at times staffed his employer’s group living home. The claimant asked the employer for work in the group home, which he believed could do on crutches and which did not require driving. The claimant also asked for administrative work, which he has experience in. The employer had no such work available for the claimant and instead granted him a leave of absence. The claimant’s brother was able to drive the claimant to and from work and the claimant could use a taxi or car service if his brother was not available.

The claimant was released to work with no restrictions on November 10, 2021, and he returned to his previous work.

**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

The claimant in this case had knee surgery and was required to use crutches for mobility and to avoid driving for six weeks. The claimant requested work within his restrictions, but his employer had no such work available for him.

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.*

This decision has been codified in 8 AAC 85.350. The burden is on the claimant to establish the first part of the test. The burden is on the Alaska Division of Employment and Training Services (DETS) to establish there is not a substantial field of employment remaining if it intends to deny benefits.

The claimant established that he could get to work and could work full time with the restrictions that were placed on him during his recovery period. He had training and experience in administrative work and in the employer’s group home. The Tribunal finds the claimant has established that he was available for a substantial field of employment.

 **DECISION**

The determination issued on October 8, 2021 is **REVERSED**. Benefits are **ALLOWED** beginning the weeks ending October 9, 2021, if the claimant is otherwise eligible.

 **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 April 25, 2022

 Rhonda Buness, Appeals Officer