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### APPEAL TRIBUNAL DECISION

**Docket Number:** 22 0928 **Hearing Date:** November 29, 2022

**CLAIMANT:**

JUSTIN KISSEE

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Justine Kissee None

#### CASE HISTORY

The claimant timely appealed a November 7, 2022 determination which denied benefits under AS 23.20.378. The issue before the Appeal Tribunal is whether the claimant met work availability requirements of the law.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective June 19, 2022. On September 30, 2022, the Division of Employment and Training Services mailed a notice to the claimant’s address of record, notifying the claimant that he was required to participate in reemployment services. The notice advised the claimant to schedule and attend an in-person reemployment eligibility assessment interview and complete any assigned activities by

October 21, 2022, or benefits would be denied.

The claimant received the notice during the first part of October. He had been advised by his former employer that work was expected to resume in October and that he would get a notice of the start date and time. The claimant set aside the notice to complete the reemployment and eligibility assessment as he expected to return to work.

The claimant did not get a notice from the employer for two weeks. He contacted the employer and was informed that the client had delayed the project until after the first of the year. The claimant forgot about the reemployment and eligibility assessment.

The claimant received a notice on October 25, 2022 that his benefits were denied. He received a notice to contact the local job service office to schedule an assessment interview within seven days. The claimant contacted the local job service office on October 25, 2022. He left a message on voice mail. The local office returned his call on October 31, 2022. He took the first interview slot available. He completed the assessment interview on November 3, 2022.

#### PROVISIONS OF LAW

**AS 23.20.378 provides in part:**

1. 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.

**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;](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E351'%5d/doc/%7b@1%7d?firsthit)

(2) makes independent efforts to find work as directed under 8 AAC [85.352](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E352'%5d/doc/%7b@1%7d?firsthit) and 8 AAC [85.355;](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E355'%5d/doc/%7b@1%7d?firsthit)

(3) meets the requirements of 8 AAC [85.353](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E353'%5d/doc/%7b@1%7d?firsthit) during periods of travel;

(4) meets the requirements of 8 AAC [85.356](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=%5bJUMP:'8+aac+85!2E356'%5d/doc/%7b@1%7d?firsthit) 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.

**8 AAC 85.355:**

The director may review a claimant's registration for work and availability for work at any time during the benefit year. As part of the review, the director shall consider the claimant's training, experience, length of unemployment, plan for obtaining work, barriers to reemployment, and work prospects. On the basis of the review, the director may assign to the claimant new suitable occupation codes, change the claimant's registration for work, assign the claimant to reemployment services or instruct the claimant to make independent attempts to find work that are appropriate for the occupation and labor market. If the claimant fails without good cause to participate in the review, participate in reemployment services as directed by the director, or follow instructions of the division to help the claimant find suitable work, the director shall determine the claimant was not available for work.

**8 AAC 85.357 provides:**

 (a) A claimant is not available for work for any week in which the claimant fails to participate in reemployment services if the claimant has been determined by the director likely to exhaust regular benefits and need reemployment services, unless the claimant has

 (1) completed the reemployment services; or

1. has good cause under (b) of this section for failure to participate in the reemployment services.

(b) The director shall find that a claimant has good cause for failure to participate in reemployment services or related services under (a) of this section if the cause would lead a reasonable and prudent person not to participate in those services and the claimant took the actions that a reasonable and prudent person would take in order to participate. A claimant no longer has good cause when the cause preventing participation ends. Good cause includes

 (1) circumstances beyond the claimant's control;

 (2) circumstances that waive the availability for work requirement in AS 23.20.378;

 (3) attendance at training approved under AS 23.20.382 and 8 AAC 85.200; and

 (4) referral to reemployment services that the director determines was made incorrectly.

# CONCLUSION

Regulation 8 AAC 85.357, above, holds that a claimant is not available for work in any week in which the claimant fails to participate in reemployment services, unless the failure to participate is caused by circumstances beyond the claimant’s control.

The claimant forgot about the reemployment and eligibility assessment until he received a denial of benefits for not completing the assessment. This is not a circumstance beyond his control. That he was later not able to reach someone at the local job service office to set an appointment for his assessment was beyond his control.

Therefore, the determination is modified to reflect his attempt to complete the assessment interview during the week ending October 29, 2022.

#### DECISION

The determination issued on November 7, 2022 is **MODIFIED**. Benefits are denied for the week ending October 22, 2022. Benefits are allowed beginning the week ending October 29, 2022, if the claimant is otherwise eligible.

#### 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 November 30, 2022.

 Tom Mize

 Tom Mize

 Appeals Officer