



APPEAL TRIBUNAL DECISION

Docket number: 23 0193 **Hearing date:** May 2, 2023

CLAIMANT:

JUAN VEGA
[REDACTED]
[REDACTED]

DETS:

BENEFIT PAYMENT CONTROL UNIT
3301 EAGLE ST, STE 205
ANCHORAGE, AK 99503

CLAIMANT APPEARANCES:

Juan Vega

DETS APPEARANCES:

Sue Nichols

CASE HISTORY

The claimant timely appealed a March 2, 2023 determination which denied benefits under AS 23.20.378 and AS 23.20.387, and held the claimant liable for the repayment of benefits and the payment of a penalty under AS 23.20.390.

The issues before the Tribunal are whether the claimant:

- was available for work during a period of travel;
- was registered for work as required
- knowingly made a false statement or misrepresentation in connection with the claim; and
- is liable for the repayment of benefits and the payment of a penalty.

FINDINGS OF FACT

On April 12, 2019, the claimant established a claim for unemployment insurance benefits effective April 7, 2019. At that time the claimant advised the Division he was located in Anchorage and he provided a mailing address in Anchorage. The claimant used the Division's website to complete and submit weekly certification forms to claim benefits. He filed for periods of time, re-opened his claim after periods of not filing, and applied for new benefit claims effective April 5, 2020, April 11, 2020 and May 8, 2022.

In December 2022, a claim center representative noted that wages were reported by an employer to the State of Nevada under the claimant's name and social security number and the claimant had not reported traveling to Nevada. The claim's unemployment claim was referred to an investigator.

The investigator examined a report of the Internet Protocol addresses of devices used to connect to the Division's computer system to file certifications to claim benefits. The investigator also obtained via subpoena records for the bank account into which the claimant had his unemployment benefits deposited. The investigator determined from the locations of the devices used to file for benefits and the locations in which purchases were made from the claimant's bank account that the claimant had traveled during weeks he had claimed benefits.

The investigator determined the claimant left Alaska on about April 1, 2019 and traveled to Las Vegas, Nevada. When he established his claim on April 12, 2019 he said he was physically located in Anchorage. The investigator determined the claimant remained in Las Vegas until May 6, 2019 and he returned to Alaska on about May 8, 2019. The claimant traveled back to Las Vegas on about August 4, 2019 and remained there until September 13, 2019. He re-opened his claim on August 21, 2019 and reported his physical and mailing addresses in Anchorage. He traveled to Alaska on September 14, 2019 to accept work. The claimant returned to Las Vegas on October 16, 2019. The records indicate the claimant traveled to California briefly in the week ending October 19, 2019, but the claimant's benefit for that week was denied for another unrelated reason, so that travel was not addressed by the investigator.

The claimant re-open his claim on October 21, 2019. He stated in the application that his physical and mailing addresses were in Anchorage. The claimant remained in Las Vegas until November 19, 2019 when he was dispatched for work. On April 6, 2020 the claimant traveled from Alaska to Las Vegas, where he remained through June 9, 2020. The claimant returned to Alaska on June 10, 2020 to accept work. The claimant was in Las Vegas August 2 through 12, 2020. He traveled to San Diego, California and then to Alaska on August 17, 2020.

On October 2, 2020, the claimant updated his physical and mailing addresses to a Las Vegas address. The next day he traveled to Las Vegas. The claimant's travel for that week was not addressed by the investigator because the claimant had reported earning wages that made him ineligible for benefits in that week. The claimant traveled from Alaska to Las Vegas on March 6, 2021.

On April 15, 2021, the claimant opened a new claim by phone with assistance from a Division representative. The claimant changed his mailing and physical address from Las Vegas to an Alaska address, though the investigator later determined the claimant was in Las Vegas at the time. The claimant traveled to Alaska on May 30, 2021. He traveled back to Las Vegas on August 10, 2021. On August 28, 2021, the claimant reopened his claim and reported his mailing and physical address was in Alaska.

On May 9, 2022 the claimant applied for a new claim, using the Division's website form. He stated that his mailing and physical address was in Alaska.

The investigator found the claimant was in Las Vegas at that time. The claimant traveled to Los Angeles on May 18, 2022 and then to Alaska on May 19, 2022 to accept work. The claimant traveled from Alaska to Las Vegas on September 16, 2022. The claimant reopened his claim on September 20, 2022 and reported his physical and mailing address was in Anchorage. The claimant remained in Las Vegas through December 16, 2022.

The Division's investigator contacted the claimant in January 2023 and again February 2023. The claimant admitted to the investigator that he traveled to Alaska to work and then traveled back to Las Vegas when he was not working.

The investigator asked the claimant if he registered for work in Nevada during the time he was there. The claimant maintained his registration on the out of work list of the chapter of his union which dispatches workers to Alaska, but that chapter does not have jurisdiction to dispatch workers in Nevada. The claimant held that he did at times register for work with the local chapter of his union in Nevada for short periods, but held that he was so far down on that list, he was unlikely to get dispatched for work in Nevada. The investigator found that the claimant had made a payment from his bank account to the Nevada chapter of his union on May 3, 2021. The investigator concluded that the payment established the claimant was registered for work with the local chapter of his union for the month of May 2021. The claimant was given the opportunity to provide the investigator with more information about the times he had registered for work with the Nevada chapter, but he declined to do so, holding his registration on that chapter's work list there had not been frequent and he mainly relied on being dispatched to work in Alaska from the union office with that jurisdiction. The claimant did not register for work with the State of Nevada's employment services.

The claimant filed for benefits each week using the Division's website form set up for that purpose. The claimant was required to answer the questions, "Did you travel?" and "Did you move to a different town?" for the week he was claiming. The claimant answered, "No" to that question each time he filed, including instances when he had just traveled to or from Nevada in the week he was claiming. The claimant was required to click a box holding that he had read and understood a statement on the form which read:

Be advised that the U.S. Post Services does not forward mail sent from our office. All correspondence will be sent to the mailing address you have provided. You are responsible for and will be held liable for the content of all correspondence sent to you concerning your unemployment insurance claim. Failure to maintain a current mailing address and/or physical address may result in a denial of benefits.

The claimant checked that he had read and understood the paragraph. He then provided the Alaska address of his mother-in-law, where he sometimes stayed on his way to and from work on the North Slope as both his mailing and

physical address. The claimant stated that he did not think it was important to report his location to the Division while he was claiming benefits. He felt the questions on the form did not apply to him since he was traveling to work and back, not on a vacation, and his travel was often accomplished in one day. The claimant held that his answers on the certifications and claim applications were “honest mistakes” and not an intentional failure to report material information. The claimant held that at times his wife completed his certifications for him, and that she would have been aware of his travel dates.

The claimant was mailed an Unemployment Claimant Handbook each time he filed a claim. The claimant recalled receiving handbooks and reading them. The handbook states, “you must report all travel when filing for benefits. You are in travel status any time you travel outside the area in which you reside.” The handbook explains that a claimant may be eligible for benefits in certain circumstances such as travel to accept an offer of work. The handbook explains that a claim must be re-opened if a claimant moves “out of Alaska, from one state to another or from one area to another within a state.” The handbook instructs that if a claimant has traveled to accept a definite offer of work, they should answer, “Yes” to the question, “Did you travel.”

In the determination issued March 2, 2023, the Division’s investigator allowed the claimant’s benefits regarding his availability for work for weeks when he traveled to accept an offer of work and weeks when he traveled from Alaska to Las Vegas in one day. Benefits were intended to be allowed for weeks in May 2021 when the claimant was registered for work with his union in Nevada, although those dates were listed incorrectly in the determination. The investigator allowed weeks in May 2020 in error when her intention was to allow weeks in May 2021. The Investigator denied benefits for all weeks filed during the period under review, including the weeks where the claimant’s travel did not make him unavailable for work and weeks when the claimant was properly registered for work in his area, on a holding that the claimant had intentionally failed to report the material fact of his location in order to obtain benefits. Fraud penalties were applied to all weeks under review.

PROVISIONS OF LAW

AS 23.20.378: Able to work and available for suitable work.

- (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: Able to work and available for suitable work: general provisions.

- (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.

8 AAC 85.351 provides:

- (a) a claimant who files a claim for benefits in a state that acts as agent in taking claims for benefits held by this state shall register for work in accordance with the statutes, regulations, and procedures of the state in which the claim is filed.
- (b) a claimant who files for benefits in this state shall register for work as required by AS 23.20 and this section. A claimant shall register for work
 - (1) repealed 3/4/2006;
 - (2) in person or by mail at the employment service office of the division that is nearest the claimant's residence;
 - (3) by telephone, if permitted by the director; or
 - (4) at the department's website by electronic means, if available from the division.
- (c) The director shall find that a claimant is not available for work for any week ending before completion of a placement registration for work. To be considered available for work from the date of the initial claim, a claimant must complete a placement registration within seven days after filing the initial claim. If the placement registration is not completed within seven days, the claimant is considered available for work the week the placement registration is completed.
- (g) The director may defer registration for work for a claimant who is
 - (1) temporarily unemployed with a definite date to return to full-time work within 45 days after the date the claimant files the initial claim;
 - (2) unemployed due to a labor dispute;
 - (3) traveling immediately following the filing of the initial claim, for the purpose of relocating outside of this state; upon arrival in

- the new area of residence, the claimant shall register for work as required in (a) of this section;
- (5) normally hired through a trade union, if the union furnishes information when requested by the director to verify the claimant's current membership and eligibility for dispatch;
 - (8) under an approved waiver of availability under AS 23.20.378 or AS 23.20.382.
- (i) If the director does not require the claimant to have a placement registration, the director shall inform the claimant that the placement registration requirement has been deferred and advise the claimant of available employment services.

8 AAC 85.353: Able to work and available for suitable work: travel claims.

- (a) The requirements of this section apply to any period during which a claimant travels outside the customary commutable area in which the claimant resides, unless the claimant travels while exempted from availability requirements under AS 23.20.378(a) or in connection with training approved under AS 23.20.382. For purposes of this section, a customary commutable area means an area where a claimant customarily commutes to and from work each day.
- (b) A claimant is available for work each week while traveling only if the claimant is traveling to
 - (1) search for work and is legally eligible to accept work in the area of travel;
 - (2) accept an offer of work that begins no later than 14 days after the claimant's departure; or
 - (3) establish or return to a residence immediately following the claimant's discharge from the armed forces.
- (c) A claimant who travels in search of work must be legally eligible to accept work and make reasonable efforts to find work each week in the area of the claimant's travel, by
 - (1) contacting in person an employment office;
 - (2) making at least two in-person employer contacts;
 - (3) registering in person with the local chapter of the claimant's union that has jurisdiction over the area of the claimant's travel; a claimant who has previously registered with the local union that has jurisdiction over the area of the travel is available for work if the claimant makes contacts as required by the union to be eligible for dispatch in the area of the travel; or
 - (4) attending in person a pre-arranged job interview.
- (d) A claimant is not available for work after the claimant travels for more than four consecutive calendar weeks to search for work. A claimant is not available for work after the claimant travels for more than seven days if traveling to

- (1) accept an offer of work that begins 14 days after the claimant's departure; or
- (2) establish or return to a residence immediately following the claimant's discharge from the armed forces.

AS 23.20.387. Disqualification for misrepresentation.

- (a) An insured worker is disqualified for benefits for the week with respect to which the false statement or misrepresentation was made and for an additional period of not less than six weeks or more than 52 weeks if the department determines that the insured worker has knowingly made a false statement or misrepresentation of a material fact or knowingly failed to report a material fact with intent to obtain or increase benefits under this chapter. The length of the additional disqualification and the beginning date of that disqualification shall be determined by the department according to the circumstances in each case.
- (b) A person may not be disqualified from receiving benefits under this section unless there is documented evidence that the person has made a false statement or a misrepresentation as to a material fact or has failed to disclose a material fact. Before a determination of fraudulent misrepresentation or nondisclosure may be made, there must be a preponderance of evidence of an intention to defraud, and the false statement or misrepresentation must be shown to be knowing and to involve a material fact.

AS 23.20.390. Recovery of improper payments; penalty.

- (a) An individual who receives a sum as benefits from the unemployment compensation fund when not entitled to it under this chapter is liable to the fund for the sum improperly paid to the individual.
- (f) In addition to the liability under (a) of this section for the amount of benefits improperly paid, an individual who is disqualified from receipt of benefits under AS 23.20.387 is liable to the department for a penalty in an amount equal to 50 percent of the benefits that were obtained by knowingly making a false statement or misrepresenting a material fact, or knowingly failing to report a material fact, with the intent to obtain or increase benefits under this chapter. The department may, under regulations adopted under this chapter, waive the collection of a penalty under this section. The department shall deposit into the general fund the penalty that it collects.

CONCLUSION

The first issue is whether the claimant was available for work during a period of travel. 8 AAC 85.353(a) provides that the requirements of this section apply

to any period during which a claimant travels outside the area in which the claimant resides. 8 AAC 85.353(b) provides that a claimant who travels away from their area of residence during their customary workweek is considered available for work only if they travel for one of the three allowable reasons stated in section (c). The claimant's benefits were not denied for any weeks where the claimant met the requirement of the regulation, such as one-day travel or travel to accept an offer of work starting within 14 days of departure.

Neither the Appeal Tribunal nor I have any jurisdiction to hold contrary to the clear wordage of the law. Scott, Com. Dec. 87H-EB-162, June 18, 1987.

The Tribunal finds the claimant was not available for work due to travel in the week ending April 11, 2020.

The second issue is whether the claimant knowingly made a false statement or misrepresentation in connection with the claim.

A presumption of intent to defraud arises on the basis of a falsified claim instrument itself. The division's claim form has but one purpose. It is the instrument executed by an individual desirous of receiving unemployment insurance benefits for a specific week. To this end, it contains clear and unambiguous language detailing the material factors upon which the division will base its decision to pay or not to pay. In addition, the individual completing the form certifies as to the truth of the answers and as to his understanding that legal penalties otherwise apply. Thus, once established that a claim instrument has been falsified, the burden of proof shifts to the individual [to establish there was no intent to defraud.] Morton, Com. Dec. 79H-149, 9/14/79.

The claimant certified each of the weeks in question. In reaffirming that simply contending a mistake or oversight fails to rebut the presumption of fraud, the Commissioner held as follows in the matter of Gillen, Com. Dec. 9121667, December 6, 1991:

If we were to allow this kind of excuse, the fraud provision would become a dead letter. Any claimant can come into a hearing and testify that the false claim was a mistake, or that he doesn't know or doesn't remember how the false entries were made.

The claimant held that his failure to report his travel and his physical location were honest mistakes, although he could not explain how repeatedly reporting on his certifications and claim applications that he was physically located in Alaska when he was physically standing in Las Vegas was an honest mistake.

In Lightle v State of Alaska, Real Estate Commission, October 20, 2006, the Alaska Supreme Court held, "fraudulent refers solely to the maker's knowledge of the untrue character of his representation." The Court held that to be

fraudulent, it is necessary that a misrepresentation be made with the maker's purpose to induce the recipient to act in reliance upon the misrepresentation. The Court noted, "this provision does not require the maker of a false statement to act with the specific 'intent to deceive'; rather it requires the maker to expect that other's conduct will be influenced."

Based upon Morton, Gillen, and Lightle, the Tribunal must hold that the claimant intentionally misrepresented his eligibility for benefits for the weeks under review.

The third issue is whether the claimant is liable for the repayment of benefits and the payment of a penalty. AS 23.20.390 states an individual who receives a sum as benefits from the unemployment compensation fund when not entitled to it under this chapter is liable to the fund for the sum improperly paid to the individual. In addition to the liability under (a) of this section for the amount of benefits improperly paid, an individual who is disqualified from receipt of benefits under AS 23.20.387 is liable to the department for a penalty in an amount equal to 50 percent of the benefits that were obtained by knowingly making a false statement or misrepresenting a material fact, or knowingly failing to report a material fact, with the intent to obtain or increase benefits.

The evidence presented shows that the claimant received benefits to which he was not entitled and that he intentionally misrepresented he eligibility in order to receive benefits to which he was not entitled. The Tribunal holds that the claimant is liable to the fund the amount of benefits he received to which he was not entitled and the payment of a penalty under AS 23.20.387.

DECISION

The notice of determination and determination of liability issued in this matter on March 2, 2023 is **MODIFIED and AFFIRMED**.

- That portion of the determination holding that the claimant was not available for work during a period of travel is **AFFIRMED**. Benefits remain reduced under AS 23.20.378 and 8 AAC 85.353 for the week ending April 11, 2020.
- That portion of the determination holding that the claimant was not available for work because he did not meet the work registration requirements of AS 23.20.378 and 8 AAC 85.350-351 is **MODIFIED**.
 - Benefits are **ALLOWED** for weeks ending May 8, 2021, May 22, 2021 and May 29, 2021.
 - Benefits are **DENIED** for weeks ending April 13, 2019 through May 4, 2019, August 24, 2019 through September 14, 2019, October 26, 2019 through November 9, 2019, April 18, 2020

through June 13, 2020, August 15, 2020, April 17, 2021 through May 1, 2021, August 28, 2021 through January 1, 2022, May 14, 2022, May 21, 2022, and September 24, 2022 through December 17, 2022.

- That portion of the determination holding that the claimant committed fraud or intentional misrepresentation is **AFFIRMED**. A disqualification under AS 23.20.387 is imposed, and benefits are denied for:
 - Weeks ending April 13, 2019 through May 4, 2019, August 24, 2019 through September 14, 2019, October 26, 2019 through November 9, 2019, April 18, 2020 through June 13, 2020, August 15, 2020, April 17, 2021 through May 8, 2021, May 22, 2021, May 29, 2021, August 28, 2021 through January 1, 2022, May 14, 2022, May 21, 2022, September 24, 2022 through December 17, 2022.
 - Weeks ending March 4, 2023 through February 24, 2024.
- That portion of the determination holding that the claimant is liable for the repayment of benefits and for the payment of a penalty is **AFFIRMED**. The claimant remains liable to the fund for benefits he received to which he is not entitled and the payment of the assessed penalty.

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 May 12, 2023.



Rhonda Bunes, Appeals Officer