



## APPEAL TRIBUNAL DECISION

**Docket number:** 23 0539 **Hearing date:** August 23, 2023

### CLAIMANT:

JUSTIN DAVIDHIZAR  
[REDACTED]  
[REDACTED]

### CLAIMANT APPEARANCES:

Justin Davidhizar

### DETS APPEARANCES:

None

### CASE HISTORY

The claimant timely appealed a July 27, 2023 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

On June 2, 2023, the Division mailed a notice to the claimant's address of record, notifying him 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 June 23, 2023, or benefits would be denied.

The claimant received the notice and scheduled an appointment to complete the in-person interview. The claimant spoke with a representative about the interview. It was discussed that the claimant could be assisted with his résumé at the interview. The claimant later contacted the Job Center to reschedule his interview because something had come up. He told the representative that he needed an appointment for assistance with his résumé. The representative advised the claimant he did not require an appointment for that purpose, he could just come to the Job Center during business hours. The claimant understood from this that he was not required to have an appointment at all.

The claimant continued to file certifications to claim benefits but noted that his benefits were denied. He contacted the Division and he was advised he was

denied because he had not completed the reemployment program requirements by the deadline. The claimant scheduled an interview for July 12, 2023 and completed the requirements on that day.

### **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....

#### **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.

#### **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
  - (2) 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 in this case provided credible that when he called to re-schedule an appointment for a reemployment assessment interview he mistakenly represented that he was asking for an appointment for résumé assistance. Based on the claimant's error, he was given the wrong advice about the requirement to scheduling an appointment. As a result of the error, the claimant missed the Division's deadline. The Tribunal finds the errors constitute a circumstance beyond the claimant's control. The claimant is not

well-versed in the Division's terms, and he had been told he could get help with his résumé at the reemployment assessment interview.

The Tribunal finds the claimant was delayed in completing the reemployment requirements due to circumstances beyond his control. The claimant was available for work during the period under review.


### **DECISION**

The determination issued on July 27, 2023 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending June 24, 2023 through July 15, 2023, 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 August 28, 2023.

  
Rhonda Bunes, Appeals Officer