



APPEAL TRIBUNAL DECISION

Docket number: 23 0541 **Hearing date:** August 23, 2023

CLAIMANT:

LEONTY MYERS
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Leonty Myers

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a July 21, 2023 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 July 16, 2023. On July 20, 2023, the claimant advised a Division representative that he was unable to be hired by a local business because he only has a tribal identity card and does not have a state identification card or any other documents which the employer would accept on hire. The claimant could not afford to travel to a nearby community to get his state identification card, although he has sent for his birth certificate and social security card by mail. The claimant plans to contact the local business as soon as his documents arrive to see if work is available.

The claimant has previously worked for local employers that accepted his tribal identification card on hire. The claimant has continued to contact such local employers including the tribal council, the local clinic, and a bingo organization. The claimant was not sure of the local school's identification requirements, but he has applied there recently as well.

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

- (7) respond promptly to an offer of suitable work; and
is available for a substantial amount of full-time employment.

CONCLUSION

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 has established that several local employers have hired him in the past with his tribal identification card only. The claimant's lack of other identification documents apparently bars the claimant from employment with only one local business and the claimant has taken steps to obtain identification so he can accept work from that employer. The Tribunal finds the claimant has a substantial field of work available to him and he is seeking and willing to accept such work. The claimant is available for suitable work.


DECISION

The determination issued on July 21, 2023 is **REVERSED**. Benefits are **ALLOWED** beginning with the week ending July 22, 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 30, 2023


Rhonda Bunes, Appeals Officer