



APPEAL TRIBUNAL DECISION

Docket number: 23 0828 and 23 0829 **Hearing date:** December 21, 2023

CLAIMANT:

ADRIAN L HARO
[REDACTED]

CLAIMANT APPEARANCES:

Adrian L Haro

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed two determinations issued by the Division on November 21, 2023, which denied benefits under AS 23.20.378. Benefits were denied under docket 23 0828 for the week ending November 18, 2023, on the grounds the claimant failed to meet the work search requirements under Alaska regulation 8 AAC 85.352. Benefits were also denied under docket 23 0829 for the weeks ending November 11, 2023, and November 18, 2023, on the grounds the claimant did not meet the availability requirements during a period of travel as outlined in 8 AAC 85.353. The issues before the Appeal Tribunal are to determine whether the claimant met the work search requirements outlined in 8 AAC 85.352 and whether he met the availability requirements outlined in 8 AAC 85.353 during a period of travel.

FINDINGS OF FACT

The claimant was working in Minnesota and living in employer-provided housing. He was terminated on November 6, 2023, and immediately filed for unemployment insurance (UI) benefits. The employer gave the claimant until November 9, 2023, to vacate the housing.

Before leaving Minnesota, the claimant was offered work in Petersburg, Alaska. The position was contingent only on passing a required background check that would be processed once the claimant relocated to Petersburg and provided his fingerprints. No specific start date was provided for the position.

On November 9, 2023, the claimant started the drive from Minnesota to Seattle, Washington, where he would board the ferry to Petersburg, Alaska. The ferry left Seattle on November 15, 2023, and arrived in Petersburg at 5 p.m. on

November 17, 2023. That same week, the claimant provided his fingerprints to the employer for the background check.

The claimant hoped to get settled into the area, but on November 25, 2023, the employer called, stating his background check was complete, and asked him to report to work. The claimant agreed, and he started working that same day.

The claimant was not looking for work in the areas through which he traveled, as he intended to relocate to Petersburg.

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 85.352: Work Search

- (a) A claimant required to register for work under AS 23.20 and 8 AAC 85.351 must actively seek suitable work by making at least one valid work search during each week that the claimant files for unemployment insurance benefits.
- (b) The division may require a claimant to make more than one valid work search during a week that the claimant files for unemployment insurance benefits based on each occupation

suitable for the claimant within the area in which the claimant is filing benefit claims. The division will notify a claimant of the claimant's work search requirement for a given benefit week by using a method specified by the director.

- (c) A work search is considered valid if
 - (1) the claimant contacts an employer regarding work;
 - (2) the work is suitable under 8 AAC 85.410 to the claimant's skills and capabilities; and
 - (3) the method of contact is appropriate based on how prospective employers in that occupation are usually contacted for work.
- (d) Using a method specified by the director, a claimant who is required to seek work under (a) of this section shall report to the division any employer contact made during each week that the claimant files a claim for unemployment insurance benefits. The report must include for each employer contact the
 - (1) date of contact;
 - (2) name of employer contacted; and
 - (3) telephone number, address, electronic mail address, or website used to make contact.

8 AAC 85.353 provides:

- (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 day 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.

CONCLUSION

When a claimant is filing for benefits from their area of residence, the work search requirements under 8 AAC 85.352 apply. The regulation states that to be eligible for unemployment insurance benefits, a claimant must be able to work and available to accept full-time work in each week they file for benefits. A claimant is considered available for work if the claimant registers for work and makes independent efforts to find work in each week they file for benefits.

However, 8 AAC 85.353 applies to any period a claimant travels outside the area where he resides. In this case, the claimant's area of residence was Minnesota until he arrived in Petersburg, Alaska, where he intended to establish his new residence. The regulation states a claimant may travel to search for work, accept an offer of work, or relocate after being discharged from military service.

A claimant who travels in search of work must make reasonable efforts to find work each week in the area of travel by making in-person contact with an employment office, two employers, or the local chapter of the claimant's union. In this case, the claimant was not looking for work in Minnesota or the areas where he traveled because he intended to relocate to Petersburg, Alaska.

A claimant who travels to accept an offer of work must complete the travel within seven days, and the work must be scheduled to begin within 14 days of departure. While the claimant, in this case, relocated to accept an offer of work, he traveled for more than seven days, and the work was not scheduled to begin within 14 days of the date his travel began.

Therefore, the claimant did not meet the availability requirements of the regulation to be eligible for benefit payments during the weeks ending December 11, 2023, or December 18, 2023.

It was unclear why the Division also denied benefits for the week ending December 18, 2023, under 8 AAC 85.352 when benefits were already appropriately denied under 8 AAC 85.353.

DECISION

The determination issued on November 21, 2023, under 8 AAC 85.352, is **VACATED** as it was irrelevant to the week ending November 18, 2023.

The determination issued on November 21, 2023, under 8 AAC 85.353 is **AFFIRMED**. Benefits remain denied for the weeks ending November 11 and November 18, 2023.

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 December 28, 2023.


Kimberly Jackson-Matta, Appeals Officer