



APPEAL TRIBUNAL DECISION

Docket number: 24 0281 **Hearing date:** May 3, 2024

CLAIMANT:

GARY MEATS
[REDACTED]

CLAIMANT APPEARANCES:

Gary Meats

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a March 30, 2024 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 March 1, 2024, the Division 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 March 22, 2024, or benefits would be denied. The claimant recalled receiving the notice. The claimant called the Division's Job Center on March 12, 2024 and advised the representative that he did not have gas available to drive 14 miles to the Job Center or \$4 to take bus in order to participate in an in-person assessment interview. The claimant requested to do the assessment by phone, but this was refused. The claimant contacted the Division's claim center and the Job Center several times by phone. On March 28, 2024, a Job Center representative agreed to complete the claimant's reemployment assessment by phone.

The claimant held that his financial and transportation difficulties did not prevent him from searching for or accepted full-time work because he could get a loan for gas if needed for work. The claimant had started work at the time of this hearing, and his new employer is willing to pick the claimant up for work.

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 could not afford gas or bus fare to get to the Job Center without taking out a loan, which he was willing to do in order to get to work. The claimant contacted the Job Center ten days before his deadline to complete the service and requested to complete the assessment interview by phone. The claimant's request was accepted and his assessment interview was completed by phone on March 28, 2024.

The Tribunal finds the claimant's delay in completed the reemployment service was due to a delay that outside his control. The claimant is considered to have been available for work during the week under review.

DECISION

The determination issued on March 30, 2024 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending March 23, 2024, 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 May 8, 2024.

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Rhonda Bunes, Appeals Officer