



APPEAL TRIBUNAL DECISION

Docket number: 24 0466 **Hearing date:** July 29, 2024

CLAIMANT:

CHARLES HAWK
[REDACTED]

CLAIMANT APPEARANCES:

Charles Hawk

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a June 3, 2024 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 April 21, 2024. On May 14, 2024, the claimant's employer, Senior Care Specialists, reported to the Division that the claimant had limited his availability to work with clients with specific hygiene needs.

The claimant held in the hearing that his religious beliefs prevent him from performing tasks that require him to touch a client's breast or genital area. The claimant also has a medical restriction that prevents him from lifting more than 150 pounds. The claimant limits the work he will accept on Sundays because he attends church.

The claimant held that the employer has been aware of his restrictions which have not changed since he was hired in 2022. The claimant has worked as a personal care assistant since 2009. When the claimant is offered work with a new client, he asks the employer for details about the level of care needed and if the claimant cannot clean their own genital areas when showering or toileting, or requires lifting of more than 150 pounds, the claimant will not accept the client.

The claimant has performed other work besides providing personal care and he continues to search for other work including work as a light delivery driver. The

claimant is willing to accept and perform full-time work that will accommodate his religious and medical restrictions. The claimant is also seeking a new line of work that will allow him to work assisting homeless clients get into housing.

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 respond promptly to an offer of suitable work; and
 - (7) 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 in this case has established that he is willing to accept and perform full-time work as a personal care attendant or in other types of work which fit within his medical and religious limitations. The Division did not establish that there is not a substantial field of employment available to the claimant, considering his limitations.

The Tribunal finds the claimant is available for suitable work.

DECISION

The determination issued on June 3, 2024 is **REVERSED**. Benefits are **ALLOWED** beginning with the week ending May 18, 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 August 2, 2024



Rhonda Bunes, Appeals Officer