



APPEAL TRIBUNAL DECISION

Docket number: 24 0834 and 24 0835 **Hearing date:** December 31, 2024

CLAIMANT:

ROBERT JACOB
[REDACTED]

CLAIMANT APPEARANCES:

ROBERT JACOB

DETS APPEARANCES:

NONE

CASE HISTORY

The claimant timely appealed a November 15, 2024, determination which denied benefits under Alaska Statute 23.20.382. The issue is whether the claimant is available for full-time suitable work while attending school or training or if he is eligible for a waiver of availability.

FINDINGS OF FACT

The claimant began working for the employer on February 10, 2024. He last worked on October 18, 2024, as a part-time sanitation worker. The job description for the sanitation worker required a general education diploma (GED), which the claimant did not have. However, the employer was experiencing staffing shortages and hired the claimant without his GED.

The claimant did not like the sanitation job. He felt the work was strenuous, and he did not like when he had to work long hours. The claimant was allowed to reduce his hours to 9 a.m. to 4 p.m., Monday through Friday, but still felt the work was too much. He also did not feel the position paid enough. When he started the job, he made \$15 an hour, and when he quit, he was making \$18 an hour.

The claimant decided that he needed to get his GED so he could find a job he liked better. He knew about free classes he could take at the local school that would help him prepare to take the GED tests. The classes were held from 5 p.m. to 7 p.m., three days each week. The claimant decided not to work while taking the classes because he wanted to focus on his studies. In early October 2024, he notified his employer he would be quitting soon.

On October 18, 2024, the claimant resigned from his position. Although he registered for class online, he was required to obtain an identification card and purchase books and supplies before school started. The claimant stated he could not take time off work to get his identification and supplies because he had previously been warned about missing work. He was unable to perform these tasks after work or on the weekends because the facilities were only open during the time he worked.

The claimant began GED classes on October 30, 2024, and classes ended on December 4, 2024, for the holiday break. Classes will start again in early January 2025. The claimant has not completed his training or obtained his GED at this time. He is currently trying to find part-time work, which will allow him time between work and class to get some rest and eat.

PROVISIONS OF LAW

AS 23.20.378 provides, in part:

- (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 is available for suitable work.

AS 23.20.382 provides in part:

- (a) Benefits or waiting-week credit for any week may not be denied an otherwise eligible individual because the individual is attending a vocational training or retraining course with the approval of the director of the Division of Employment and Training Services (DETS) or because, while attending the course, the individual is not available for work or refuses an offer of work.

8 AAC 85.356 provides in part:

A claimant who is attending training is available for work if

- (1) the claimant is not disqualified under AS 23.20.378(c);
- (2) the claimant is attached to the labor force and is ready and willing to immediately accept suitable full-time work for which the claimant is presently qualified; and
- (3) the claimant;
 - (A) while working full-time and attending training, became unemployed for reasons not attributable to the training, and the hours of training have not changed substantially;
 - (B) began attending training after becoming unemployed and no rearrangement of the training schedule would be necessary to accommodate at least one regular work shift in an occupation suitable for the claimant; or

(C) is willing and able to change the training schedule or leave the training to accept suitable work.

8 AAC 85.200 provides, in part:

- (b) The director shall approve training for a claimant if
 - (1) the claimant needs training to
 - (A) overcome immediate barriers to reemployment, including disability, obsolete skills, or lack of work search skills;
 - (B) remain employable in the claimant's customary occupation;
 - (C) end a pattern of employment in temporary, casual, or unskilled work and increase skill level, earning power, or employment opportunities; or
 - (D) obtain a necessary occupational safety and health certification;
 - (2) the training is
 - (A) a vocational training or retraining course;
 - (B) taken on the full time schedule offered by the training provider; and
 - (C) is not a home-study or correspondence course;
 - (3) a surplus of qualified workers in the training occupation does not exist in the geographical area in which the claimant is seeking work; and
 - (4) the claimant has the aptitude to successfully complete the training.
- (c) The director may not deny approval for training solely based on the
 - (1) length of the training;
 - (2) cost of the training; or
 - (3) lack of a contract of employment at the conclusion of the training.
- (d) The director shall approve training for a claimant who leaves unskilled work to attend the training if the claimant meets the other requirements of this section.
- (e) Notwithstanding (a) - (d) of this section, the director shall approve training for a claimant who is placed in the training under a state or federal training program sponsored directly or indirectly by
 - (1) the United States Secretary of Labor; or
 - (2) a state or federal employment or training agency.

CONCLUSION

8 AAC 85.356 provides that a claimant who is attending training is available for full-time work if they are ready and willing to accept full-time work. The claimant is only willing to accept part-time work. Therefore, the claimant was not available for full-time work while attending training.

AS 23.20.382 states that an otherwise eligible individual shall not be denied unemployment insurance benefits if they are not available for full-time work while attending an approved vocational training program under the criteria listed in 8 AAC 85.200(b).

Under section A it provides that a claimant's training will be approved if he needs the training to "*overcome immediate barriers to reemployment, including disability, obsolete skills, or lack of work search skills*". The claimant has not established that his training was necessary to overcome any barriers to reemployment. He was working prior to his training.

Under section B it provides that a claimant's training will be approved if he needs the training to "*remain employable in the claimant's customary occupation*". The claimant's customary occupation was custodial work. The claimant was hired on a permanent basis and continuing work was available. There was nothing to establish that his ability to work in his customary occupation was in jeopardy.

Under Section C it provides that a claimant's training will be approved if he needs the training to "*end a pattern of employment in temporary, casual, or unskilled work and increase skill level, earning power, or employment opportunities*". The claimant's employment was not temporary or casual. He was working permanently, and continuing work was available. His work may have been unskilled, but there is nothing to establish his training would increase his employment opportunities in his labor market, or earning power, considering he was already working a job that required a GED.

Under Section D it provides that a claimant's training will be approved if he needs the training to "*obtain a necessary occupational safety and health certification*". The claimant's classes were not to obtain an occupational safety or health certification.

While the claimant's choice to obtain his GED is commendable, he has not established that his training was necessary as outlined in the provisions of the regulations, rather than a personal choice. Therefore, the claimant does not qualify for a waiver of availability. The decision will reflect the correct dates of training.

DECISION

The determination issued on November 15, 2024, is **MODIFIED (to correct the dates)**. Benefits are **DENIED** for the weeks ending November 9, 2024, through December 7, 2024.

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 January 16, 2025.


Justin Karaffa, Appeals Officer