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5 GENERAL

Law: AS 23.20.378(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. . .*

This provision is central. Benefits are payable only to members of the labor force who are unemployed through no fault of their own. “Unemployment without fault” is discussed in sections of separation from employment, refusal of work, and labor disputes.

Labor force attachment is shown first by work and earnings in covered employment necessary to establish initial monetary eligibility. Continuing attachment is shown by **ability to work** and **availability for work**.

A. Definitions

1. Field of employment

The field of employment is the range of jobs that the claimant is able and willing to accept. It is always defined in terms of the individual claimant and may change based upon factors both within and outside the claimant's control.

Part-time work is not sufficient for availability. Even where the claimant's past employment history includes part-time work, the claimant's present eligibility depends upon whether potential full-time work exists that the claimant is willing and able to perform.

2. Substantial field of employment

The term "substantial field of employment" means a field of employment that is "real" or "actual," rather than "ample" or "large." The fact that other workers with similar capabilities and qualifications are employed in the performance of work in the labor market shows that there is a substantial market.

8 AAC 85.350(b)(7) requires that a claimant be available for a "substantial amount of full-time employment." **A "substantial" field of employment is some identifiable occupation or occupations that can be matched with the claimant's qualifications, abilities, and restrictions, whether or not there are actual job vacancies.** This does not mean either that a purely hypothetical field of employment will suffice, or that there must be absolutely no field of employment before a disqualification may be issued.

3. Attachment to the labor force

A claimant shows an initial attachment to the labor force if the claimant is monetarily eligible for unemployment insurance benefits.

The claimant demonstrates a continuing attachment to the labor force if there is an adequate field of employment for suitable fulltime work in which the claimant has training or experience, and:

- The claimant is physically and mentally capable of performing this work, and
- The claimant is ready and willing to accept this work.

4. Labor market

The claimant's labor market is the area in which the claimant seeks work. In most cases it will be the area of the claimant's residence. For a complete discussion of the labor market, see AA 150.05 AREA OF RESIDENCE.

5. Restriction

A restriction is any limitation imposed by the claimant that limits the claimant's field of employment. The restriction may be a physical limitation, such as an inability to lift over ten pounds, or a restriction as to days or hours to be worked, or requested wages, or inability to travel the distance required due to transportation problems.

6. Compelling restriction

A restriction is compelling if it is one over which the claimant has no control.

7. Good cause for restriction

A claimant has good cause for a restriction if a reasonable person in the same circumstances who sincerely wanted to be gainfully employed would similarly restrict the field of employment.

8. Waiver of availability

Under AS 23.20.378, a claimant may receive a waiver of availability if the claimant is:

- ill or disabled
- traveling to obtain medical services
- hunting or fishing for personal survival

- attending a funeral of an immediate family member, or
- providing jury services

In these cases, the claimant may not have to be available for work. Further discussions of these circumstances are discussed under individual headings under this manual.

9. Missed work

An availability issue exists anytime a claimant has missed suitable work during a week in which the employer scheduled and needed the claimant to work. Furthermore, a waiver of availability is nullified if the claimant has to refuse an offer of new work or to work an existing job.

> Example: The claimant had a part-time job that was scheduled 6-32 hours per week. She missed work on one day because of a temporary illness. The claimant argued to the Tribunal that she was still able to work the remaining six days in that week and met the requirement to be available for five days of the week. In denying benefits, the Commissioner stated, “Unemployment benefits are only payable on a weekly basis and are not broken down to a daily formula. Accordingly benefits must be denied the claimant for the entire week in question.” (10 1777, October 12, 2010)

10. Compensable claim status

Regulation: 8 AAC 85.010(8)

> *"[C]ompensable claim" means a continued claim for which a money benefit is payable or has been paid, or for which a credit against an overpayment is allowed or has been allowed;*

If even one dollar of benefits is payable on the claim, or is creditable against a previous overpayment, the claim is compensable. A waiting week on a new claim is not a compensable claim. However, a waiting week occurring while the claimant is drawing benefits under the compensable claims provision does not terminate the claimant's eligibility.

A claimant is in "compensable claim status" if:

- the claimant has filed a compensable claim for either partial or total unemployment for the week immediately preceding the condition for which the status is a requirement; and

- the claimant has not refused or missed the opportunity to accept suitable work because of the condition for which the claimant is in

compensable claim status. Disqualification begins with the week of the refusal.

Example: A claimant was in a treatment center for an alcohol problem from March 12 to April 22. He filed his claim for benefits on March 27. He was not in compensable claims status since he had not been paid the week before, the waiver for illness could not be applied, and he was held not available for work. (97 1067, May 21, 1997)

It is not necessary that each week of the condition be preceded by a compensable claim (81H-105, May 20, 1981)

In some circumstances, the language of the provision allows the payment of benefits to persons who become disabled while working **part-time**. A claimant who is employed on a part-time basis may be eligible for a waiver of availability if:

- they were eligible and paid benefits the week prior to the week of the condition causing unavailability, and
- they have not refused or missed an opportunity to work.

If the claimant must refuse scheduled or on-call work, the claimant at that point loses the compensable status, and is no longer eligible.

Example: A claimant worked on-call. The claimant filed and received unemployment insurance benefits for the week ending May 1, 1999. On May 5, 1999 the claimant traveled to Bethel to have her infant cared for by a doctor. The claimant in this case was eligible for benefits, and was paid the week prior to her travel. However, she was offered work on May 5, 1999, and was unable to work due to the medical travel. Since it was necessary to refuse work in order to travel, the Tribunal considered the claimant unavailable for full-time work during the period claimed. (99 1091, June 7, 1999)

A claimant who returns to work and either works full-time during a week or earns wages equal to or greater than one and one-third times the weekly benefit amount plus fifty dollars, is no longer unemployed and is ineligible for further benefits under the compensable claim status provision (81H-105, May 20, 1981)

11. Prevailing

Prevailing is the rate paid, hours worked, or conditions of work that apply to the largest number of workers doing similar work in the locality. If it is numerical, it is a single figure, not a range. For a description of how to calculate the prevailing figures, *see* VL 500.45 E, "Prevailing Rate."

12. Respond Promptly

To be considered available for work a claimant must be able to respond promptly to an offer of suitable work for a minimum of five working days in the week. "Promptly" in this sense means within a reasonable report time for the occupation, not necessarily instantaneously. Respond does not necessarily mean accepting a long distance phone call using a cell phone.

> Example: The claimant required two or three days to be able to respond to a job interview and one or two weeks to be able to respond to an offer of work. The Tribunal held that she was not able to respond promptly and was therefore unavailable for work. (98 1927, September 24, 1998)
>
> Example: The claimant lived in North Pole and traveled to Oregon during the holidays. He argued that he could return to work in Alaska if his union contacted him while traveling. The Commissioner held that the claimant was not immediately available for work in his labor market under 8 AAC 85.350. The definition of the words “prompt” and “accessible” both imply that the claimant must respond immediately. (05 0035, April 21, 2005)
>
> Example: The claimant traveled to Seattle and Montana for interviews. When the tribunal asked how soon he could accept work, he replied “two or three weeks because he needed to relocate and move his belongings.” The Commissioner held that 2-3 weeks to prepare was not reasonable. (08-1407, December 9, 2008)

13. Five Day Availability

Claimants must be physically present and available for work in the local labor market for five full days during the claimant’s customary workweek. Any period of unavailability must be investigated to determine the claimant’s attachment to the labor market with respect to the days of the week they are unavailable. In most cases, the claimant’s customary workweek must be examined to determine their availability. A claimant’s customary workweek is the customary days of employment in the claimant’s usual occupation.

If the claimant is unavailable for the same period of time for the same reason in successive weeks, there is a question of availability since there is an ongoing conflict with availability for full time work.

Example: The claimant was unavailable for work on Wednesdays because she and her husband had counseling appointments. The Tribunal held that the restriction made her unavailable for work. (98 0974, June 13, 1998)

B. Ability to Work

Regulation: 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*.

Under this definition, claimants are able to work if there is some work that they can do in the field of employment in which they are offering their services. They need not necessarily be able to work in their normal occupations or be able to compete on an equal footing with all other claimants. But some field of employment must remain to them in spite of any limitations. Therefore, the claimants' physical capacity, the types of work they are able to perform, and their work prospects under any physical limitations must always be explored. See AA 235 HEALTH OR PHYSICAL CONDITION.

1. Short-term illness, injury, or medical consultation

If a short term illness, injury, or medical appointment, temporarily removes the claimant from the labor market during a week, the claimant can still be considered able to work and eligible for benefits as long as the claimant is:

- Able and willing to promptly respond to an offer of suitable work; and
- Physically present and otherwise available for full time work during their customary work week.

If an illness, injury or medical appointment, makes the claimant unavailable during an entire day of their customary work week, they are not considered able to work and are not eligible for benefits unless they qualify for a medical waiver of availability.

Likewise if a claimant has to miss or refuse work due to the short term illness, injury or medical appointment, they cannot be considered able to work for that week.

See AA 235.05 “GENERAL, Waiver of Availability” and AA 360 “Personal Affairs”.

C. Availability

Regulation: 8 AAC 85.350(b)

A claimant is considered available for suitable work if the claimant

(1) registers for work as required under 8 AAC 85.351; . . .

(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.

1. General

Other requirements are that claimants make independent efforts to find work when properly directed to do so, and that they meet special requirements while traveling and in training. See AA_150.1 TRAVEL, and AA_160.4 WORK SEARCH.

"Willingness to work is an issue, because a claimant who is unwilling to work is not available for work." (95 0989, June 30, 1995)

A claimant who is properly registered for work is presumed available for work unless and until some factual event leads to an opposite conclusion. Once a claimant has registered for work, therefore, the claimant's eligibility depends on the kinds and conditions of work the claimant is willing and able to accept and upon the field of employment for that particular claimant under the claimant's circumstances.

The basic rule for determining availability in all cases is supported by a ruling of the Alaska Supreme Court in Arndt vs. State, Department of Labor, Sup. Ct. Op. No. 1729. The test as adopted by the court requires:

- That a claimant be willing to accept suitable work which the claimant has no good cause for refusing, and
- That the claimant thereby be available to a substantial field of employment.

In other words,

- **If claimants have good cause for restricting their potential fields of employment, they are eligible so long as some reasonable prospect of work remains under the restriction;**

- **Claimants who do not have good cause for their restrictions are ineligible if their potential field of employment is restricted to any significant degree. If their restriction has no significant effect on their field of employment, it may be disregarded, whatever their reason for imposing it; and**

- **If claimants' restrictions virtually eliminate their field of employment, they are ineligible, regardless of whether they have good cause for the restriction.**

A claimant's availability depends upon the kinds and conditions of work that are suitable for the claimant, the reasons for any restrictions the claimant might impose, and the remaining field of potential full-time employment.

2. Restrictions on availability

All claimants impose restrictions of some sort on the work they will accept. It is not required that a claimant be available for work without restriction. As the Commissioner stated "I have never held that, to be available for work within the meaning and intent of the . . . statute, an individual must be available for work without restriction for any period of time. Indeed, it is recognized that all individuals are restricted to one degree or another by factors both within and without their control. Thus, availability for work is a relationship between the individual's restrictions and employer requirements. Reasonable restrictions as to type of work, wages, etc., do not necessarily create unavailability. The main test to be applied in determining the effect of restrictions upon an individual's availability is: 'Is there a reasonable chance of procuring work under the restriction imposed?'" (78H-137, August 11, 1978)

A restriction imposed with good cause will not make the claimant unavailable so long as some field of employment remains. In some cases, only a compelling restriction will provide good cause. In other cases, a restriction that is reasonable under the circumstances will provide good cause. Since a compelling restriction, such as a disability, is outside the claimant's control, claimants cannot be expected to modify it as their unemployment progresses.

> Example: The claimant had restricted her work to other than day work following the birth of her child because she could not find reliable daytime childcare. Because she was a licensed travel agent and there were many jobs in the field that were other than day shift, the Tribunal held that she was available for work because her restriction was with good cause and there was a substantial field of work available for her. (99 0413, March 25, 1999)

A reasonable restriction is one that, although not compelling, is nevertheless supported by the claimant's training and experience, length of unemployment, and work prospects. For example, it is reasonable for claimants who have been unemployed only a short while, with excellent work prospects, to restrict themselves to work in their normal occupations and at their customary wage.

Reasonable restrictions that are not for compelling reasons gradually become unreasonable, and therefore disqualifying, as the claimant's unemployment lengthens or the claimant's work prospects lessen.

The claimant must always be told at the point that restrictions are no longer considered reasonable and given a chance to adjust them.

An unreasonable restriction that in any way limits the claimant's availability is disqualifying.

> Example: The claimant had planned to travel since December 1998 and would only accept work that would allow her a month's leave to complete her travel plans. The Tribunal held that she was not available for work, as the restriction would limit her field of employment. (99 0708, April 23, 1999)

3. Suitable work

A claimant is required to be available only for suitable work.

Law: AS 23.20.385

(a) Work may not be considered suitable . . .

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.

(b) In determining whether work is suitable. . the department shall . . . consider . . . the degree of risk to the claimant's health, safety, and morals, the claimant's physical fitness for the work, the claimant's prior training and experience, and earnings, the length of the claimant's unemployment, his prospects for obtaining work at the claimant's highest skill, the distance of the available work from the

claimant's residence, the prospects for obtaining local work, and other factors that influence a reasonably prudent person in the claimant's circumstances.

A complete discussion of suitable work is found in SW 5. A judgment of suitability depends on a comparison of prevailing conditions in the labor market with the claimant's training, experience, and restrictions. Suitable work is work that compares favorably with other similar work in the labor market, and in addition fits the claimant's own qualifications.

- The kinds of work that might be considered suitable for a particular claimant depend upon the claimant's physical abilities, prior training and experience, the length of the claimant's unemployment, and the claimant's work prospects.

- The suitability of conditions of work, on the other hand, depends on prevailing conditions for similar work in the labor market and any risk to the claimant's health, safety, or morals that would be incurred by accepting work under those conditions.

4. Customary occupation

A claimant's customary or principal occupation is usually the occupation in which the claimant has earned the wage credits on which the claim is based. It is always an occupation in which the claimant has worked, whether or not it is currently available, or whether the claimant is now able to do it, or whether the claimant now has training to perform work at a higher skill level.

If the claimant has worked in two or more distinctly different occupations in the base period for the benefit year, the occupation in which the claimant has worked most recently or longest overall is the claimant's principal occupation. If there is a doubt as to the claimant's principal occupation, consider the customary occupation to be that of the higher skill level, if it is available in the area where the claimant is seeking work. If the claimant has worked generally in one occupation and plans to return to that occupation, but has during the benefit year worked in another occupation, consider the customary occupation to be that in which the claimant has worked generally.

The regulation 8 AAC 85.410, specifies that the director shall determine that work in a claimant's customary occupation or work that is outside of the claimant's customary occupation for which the claimant has the training and experience, to be suitable under AS 23.20.385(b).

A claimant whose customary occupation is no longer available in the local labor market is not necessarily unavailable for work if the claimant's skills are readily transferable to other work in the labor market that is in demand. For a discussion regarding training and experience and the suitability of work, see SW 195.05 "Experience or Training."

5. Customary Workweek

A claimant's customary workweek can be determined by the hours and shifts in their usual occupation in their labor market area. A customary workweek is the number of hours worked per week by the majority of workers in the same occupation during periods of normal workload.

> Example: Alaska State government workers generally work a 37.5 hour work week. Construction work varies considerably throughout the year. If there is no standard work week, 40 hours would be considered full time.

> Example: A claimant that works in an office setting will usually have customary hours of Monday – Friday 8:00am – 5:00pm, whereas a bartender may be required to work the weekend shift.

Restrictions that remove a claimant from their labor market must be reviewed to ensure that the claimant is available for work for at least five days of their customary workweek. See AA 450 "Customary Hours and Days of Work."

> Example: Customary work days for the claimant are Monday through Friday. The claimant is unavailable on Saturday and Sunday due to incarceration. The claimant would be considered available for the week.

If a claimant has regularly worked longer or irregular shifts in a week, they will still be held to be available for five full days of the work week.

> Example: A claimant's most recent work shift was 10 hour days, 4 days per week. To be considered available for work, they must be willing to work 5 days per week.

D. Period of Disqualification

Availability is framed as a week-by-week requirement in the statute. However, **once a disqualifying condition is established, the disqualification is indefinite, until the disqualifying condition no longer exists**. An ongoing unavailability does not require a new determination for each week claimed.

A claimant who is available for work for five or more days of the workweek is considered available for the entire week. There is no provision in the Alaska Act for payment of partial benefits based on availability for part of a week.

E. Lifting of Disqualification

The lifting of an availability disqualification follows the same principles involved in an initial able and available determination, except that in these cases, the claimant is now showing why the restrictions that previously made the claimant unavailable no longer exist. Therefore, it is important to make sure that the original restrictions have in fact been removed.

> Example: There should be an exact description of the kinds of private or public transportation available, names and addresses of providers of care, and so on, not merely the claimant's statement that the claimant now has transportation or a baby sitter.

When a restriction is based upon circumstances within the claimant's control, the claimant's efforts to seek work may be an indication of willingness to abandon this previous restriction. The claimant's present conduct must support the assertion that the claimant is in the labor force.

40 ATTENDANCE AT SCHOOL OR TRAINING COURSE

40.05 GENERAL

A. Training Program Sponsored by a State or Federal Employment or Training Agency

Law: AS 23.20.382

1. TRA Sponsored Training

Sections (b) and (c) in the above statute allow claimants to receive a waiver of availability while receiving **either academic or vocational training** sponsored by TRA.

2. Workforce Investment Act Sponsored Training

Section (d) allows claimants to receive a waiver of availability while receiving either academic or vocational training sponsored by WIA. The Workforce Investment Act of 1998 consolidated many federally funded employment and training programs into three program areas and funding streams: adult workers; dislocated workers; and youth.

To be considered for training services under WIA, an individual receives an assessment and appropriate vocational counseling to ensure they have sufficient labor market, employer and trainer expectations to make an optimal choice about his or her vocational opportunities. Training services are only provided when labor market or employer information indicates that the training will lead directly to employment or job progression.

3. Other State or Federally Sponsored Training

Regulation: 8 AAC 85.200(e)

A claimant receives a waiver of availability during any week in which the claimant attends a training program sponsored directly or indirectly by the United States Secretary of Labor or a Federal or State employment or training agency. **The training may be either vocational or academic.**

If a claimant is placed in training by a federal or state employment or training agency, the waiver requirements listed in 8AAC 85.200 (a) – (d) **do not apply**. This means the individual who is placed in training does not need to attend training full time, the training can be academic or vocational, it can be a home-study or correspondence course and the claimant may quit skilled work to attend.

When another state or federal employment or training agency is working with the claimant and has placed them in a program, the Department will

cooperate and facilitate the school attendance by allowing a vocational waiver.

Claimants who are placed in state sponsored programs are considered to be in approved training and may be eligible for a training waiver.

Examples include State Training and Employment Program, Alaska Technical and Vocational Education Program, Vocational Rehabilitation, Anchorage Construction Academy, High Growth Job Training Initiative Program, Youth First Program, Alaska Works Program, and the Denali Training Fund.

Claimant's "placed" in training should not be confused with claimant's who are "using" available money to attend school. Recipients of GI Bill monies, or scholarship monies, etc. are not usually "placed" in training but have elected to use available money to attend training.

B. General Discussion of School or Training and Availability

Law: AS 23.20.378(c)

Regulation: 8 AAC 85.356

See AA 40.1 D. Is the Claimant Taking Ten or More Credit Hours or the Equivalent? for a discussion of the meaning of "ten or more credit hours or the equivalent."

1. Types of school or training

a. Academic school for more than ten hours per week

Under AS 23.20.378(c), a claimant who attends an established school in a course of study providing academic instruction of ten or more credit hours per week, or the equivalent, is not available for work. However, the statute provides for a waiver of this disqualification for a claimant who has pursued an academic education for at least one school term, worked at least 30 hours per week during a significant portion of that time, and become unemployed from the claimant's most recent work due to layoff or job elimination. In addition, the claimant's academic course schedule may not preclude the claimant's availability for work. See AA 40.1 ACADEMIC INSTRUCTION for a complete discussion of these points.

b. Approved vocational training program

Under AS 23.20.382, a claimant who attends a vocational training program approved by the director does not need to remain

available for work or to accept an offer of work while attending the training program. For a discussion of a vocational training program approved by the director, see AA 40.2 APPROVED VOCATIONAL TRAINING PROGRAM.

c. On-the-job training

See also TPU 30, Apprenticeship or Preparatory Services, and TPU 40, Attendance at School or Training Course.

A claimant, who is trained on the job by the employer, is in most cases, paid for such training and is therefore considered employed. If the wages are less than excess, and the claimant participates in the training less than fulltime, the claimant is potentially eligible for benefits. If the claimant volunteers to work in order to convince the employer that the claimant is worth being hired, the claimant is unemployed and participating in unpaid training.

> Example: A claimant worked as a volunteer on a commercial fishing boat for 100 hours during a two-week period, demonstrating his abilities to prospective employers, and learning about commercial fishing. He was not paid for this work, but was hired by a commercial fisher. In allowing benefits, the Commissioner held that the unpaid training was not service, but was "a period of unpaid training." (95 2456, October 31, 1995)

d. Other school or training

A claimant who attends an established school in a course of study providing academic instruction of less than ten credit hours per week, or attends a vocational program not approved by the director must meet the availability requirements under 8 AAC 85.356 to be available for work.

> Example: A claimant was laid off from his last job. He was willing to work at jobs that did not interfere with his schooling. Because he had not in the past worked while attending school, he was denied benefits for the period in which he was taking more than ten credit hours, but allowed when he took only seven credit hours, all in the evening. (97 1509, July 17, 1997).

2. Attendance requirements

A claimant may receive education from a school either by direct classroom attendance, or by a variety of off-campus methods, such as

correspondence schools, televised classes, telecommunication, computer communication, and the like. The determining factor as to whether enrollment in these classes is attendance under the meaning of the statute is the amount of flexibility in matters of attendance and participation, not the location or mode of communication classes are taken.

a. Correspondence study

Correspondence study is training done at home, rather than a school setting. In correspondence study, the person completes the training with no requirement to be in a particular place or to participate at a particular time. This may take place through the mail, by computer, or by televised courses that the student can make arrangements to view at the student's convenience. A requirement that a student be present on a one-time basis for a final examination or the like is not determinative.

Training that a claimant takes through correspondence study is **not** "attending an established school" for the purposes of AS 23.20.378(c). Credit hours taken through correspondence study are not included in the determination of the total hours of a claimant's attendance at an established school under the statute (96 0766, June 25, 1996.)

b. Off-campus participatory learning

In off-campus participatory learning, the learner completes the training through courses that require the active participation of the learner at specified times through telecommunication or real-time computer communication.

Training that a claimant takes through off-campus participatory learning **is** "attending an established school" for the purposes of AS 23.20.378(c). Credit hours taken through off-campus participatory learning are included in determining total hours of a claimant's attendance at an established school under the statute.

> Example: A claimant attended academic courses through telephone conference calls for a total of 12 credit hours. Because the lectures were held at specific times that she had to call in and participate, the Commissioner held that she was attending classes within the meaning of the statute. (98 0571, July 8, 1998)

Attendance via the Internet is much like being in a classroom. If there is a requirement to participate online on a specific day and time, it is considered to be attending school.

Example: A claimant was enrolled in 5 classes at UAS for a total of 16 credit hours. The courses were all taken via the Internet but some required a weekly teleconference. The Commissioner held the claimant was “attending” those courses that required teleconference participation. Her attendance was for 10 credit hours per week and fell within the requirements set forth in AS 23.20.378 (06 1697 November 28, 2006)

c. Independent study

In independent study, a person is bound to complete a course within certain parameters, and to report to an instructor or to the provider on a regular basis. If academic, it has a credit value assigned and should be counted in the credit hours. If vocational, the training may be eligible for a vocational waiver. (98 0766, May 14, 1998)

3. Other factors in school or training

a. Is the claimant attached to the labor force?

Unless the claimant is eligible for a vocational waiver of availability, the claimant's school schedule must permit the claimant to be available for full-time work in at least one regular work shift in the claimant's normal working hours, either as it stands or by a rearrangement that the claimant is able and willing to make.

If the claimant's school schedule leaves only part-time work available, the claimant is not available for work (94 9295, February 21, 1995).

Example: A claimant was taking academic classes for nine credits in each week. Her classes were in some cases evenings, in some cases days, and in some cases Saturdays. Her unrebutted contention was that she was seeking counseling work that was available in all shifts, including midnight. Since she was available for at least one shift in her usual occupation without rearranging her schedule, the Tribunal found her available for work for the time in question. (97 0560, June 1, 1997)

Example: A claimant was not eligible for the vocational training waiver. She was attending school from 9 a.m. to 6 p.m. training to be a cosmetologist. She claimed that she was willing to work the graveyard shift, midnight to 7 a.m. as

a waitress. The Commissioner, in over-ruling the Tribunal's finding that this schedule was unrealistic, held that there was no reason to disbelieve the claimant's contention that she could manage such a schedule. (98 0095, April 21, 1998)

Example: A claimant was not eligible for the vocational training waiver. She was available for full-time work at night. Her previous experience had been as a receptionist and patients' record keeper in a medical setting. The Tribunal held that, since the only night work possible would be in a twenty-four hour emergency care facility, and that provided too small a percentage of the labor market, she was not available for work. (98 0239, March 3, 1998)

b. Did the claimant become unemployed while working full-time and attending academic or vocational training?

A claimant who becomes unemployed while working full-time and attending academic instruction or vocational training is available for work so long as the reason for the claimant's unemployment is not due to the school attendance. A claimant may voluntarily leave work or an employer may discharge the claimant from work for any reason other than the claimant's attendance in the schooling or training. See AA 40.2, B. Did the Claimant Voluntarily Leave Skilled Work to Attend the Training Course? for exception to this.

Example: A claimant quit his job due to his school attendance. He was taking nine credit hours towards a two-year business administration degree. He was held unavailable for work because the reason for his unemployment was to attend school. (97 2362, November 25, 1997)

Example: A claimant quit her job in order to get married. She was taking nine credits for three courses, and stated that she was able to work full time while taking these courses, or would quit school to accept work. Because she had not quit her job for a reason connected with the school, and was taking fewer than ten academic credits, she was held by the Tribunal to be available for work. (98 2116, October 14, 1998)

Example: A claimant was working full-time while attending academic instruction part-time at the University of Alaska. He worked the swing shift as a heavy equipment operator for the federal government, until he was laid off due to the lack of work. He remained available for that work during swing

shift hours. The claimant did not change his class hours of attendance. The Commissioner held, reversing the Tribunal decision, that the claimant was available for work. (95 1430, August 30, 1995)

c. Did the claimant increase school attendance?

A claimant who becomes unemployed from work for reasons not due directly to school attendance, but then substantially increases class hours, so as no longer to be available for full-time work during one regular work shift, is not available for work.

Example: A worker attending vocational training six clock hours per week quits work. The worker then increases attendance from six clock hours per week to 12 clock hours per week and is no longer available for full-time work during one regular work shift in his normal working hours. He is not willing to reduce the hours to make him available for full-time work. The worker is not available for work.

C. Distinction between Academic Schooling and Vocational Training

Law: AS 23.20.520(16)

Law: AS 23.20.520(21)

Regulation: 8 AAC 85.010(22)

1. Vocational training

Vocational training is training for employment in trades, skills, or crafts, including training in the processing, machine trades, bench work, structural work, transportation, agricultural, fishery, and forestry occupations. It also includes training for employment in technical, service, or para-professional occupations. Para-professional occupations are those that do not require a professional degree, but that assist professional workers, such as paralegal, teachers' aides, medical technician, and the like.

Example: A claimant was taking ten credit hours in computer courses. He did not intend to apply them to a degree, but was taking them because employers in his area generally required computer skills and knowledge. The Tribunal held the courses to be para-professional, rather than academic. (97 2471, December 5, 1997)

A course is vocational if:

- The course content is vocational; and
- The course is not intended for credit for a degree from an institution of higher education (9028730, February 15, 1991); or
- The school is for-profit (01 0859, May 7, 2001).

The course content is vocational

Vocational education programs offer an organized sequence of courses that will prepare individuals for employment in occupations that require preparation other than a college degree. These programs take place in various industries, such as mechanical engineering technology, automotive technology, health occupations, etc. The subject matter may consist of basic academic skills, but more likely hands-on contextual knowledge.

The course is not intended for credit for a degree from an institution of higher education.

Examine the training program content and, if necessary, the claimant's training objective, to determine if the training program is a vocational training program. If:

> A claimant is taking academic classes as part of a vocational training program, and these classes are necessary to obtain a vocational certificate in the program, they are considered as vocational classes.
>
> > Example: An English class is an academic course. However, if a claimant takes it in conjunction with a diesel mechanic training program to receive a certification in the training program, then the academic course is considered part of the vocational training course.

The fact that the Division of Vocational Rehabilitation funds a course does not necessarily make it vocational, the course content and purpose determines the nature of the course.

> > Example: A claimant took courses leading to an associate degree in applied science funded by the Division of Vocational Rehabilitation. Because he would receive an associate's degree, the Tribunal held that the course was academic. (98 0149, February 13, 1998)

The school is for-profit

Regardless of whether the course is directed towards a degree, academic instruction received from a for-profit school must be addressed under the vocational provisions of law.

AS 23.20.520(16)(D) provides in part that an "institution of higher education" is a public or other non-profit institution. This definition cannot limit the definition of "school" in AS 23.20.378(c). Under most circumstances, a claimant pursuing a degree and enrolled in an academic course of study from an institution of higher education will be considered under the academic provision of law. This is because in most cases, the claimant is attending a public or other non-profit institution.

The Statute does not define for-profit schools. These schools, like non-profit schools are licensed and given a permit to operate by their state. It can be difficult to determine if a school is for-profit because like non-profit schools, many are publicly funded and their operating money may come from taxpayer-backed bonds or other capital sources. Usually, for-profit companies operate private for-profit schools.

Example: The Commissioner ruled that Charter College did not meet the definition of an institution of higher education as defined in AS 23.20.520(16)(D) because it is a private, **for profit** institution. Accordingly, training taken at Charter College cannot be considered under our academic provisions and should be considered vocational training even if the outcome is a degree. (01 0859, August 20, 2001)

2. Academic training

Academic training is training for employment in the business and professional occupations (9325001, January 26, 1994). A training course is academic if it is:

- Part of a program of instruction that is directed toward a degree; or
- Intended for transfer credit for a degree from an institution of higher education as defined in AS 23.20.520(16) (94 9146, December 27, 1994); or
- If the subject matter by itself is academic (9028730, February 15, 1991).

Generally, a course of study that does not meet the definition of a "vocational training or retraining course" as described in AS 23.20.520(21), is considered academic.

3. Remedial, basic skills training, and GED

The definition of vocational training also includes "remedial, basic skills, or literacy training that is a prerequisite to occupational-specific training or necessary for success in work search or general work performance." Any training that is necessary for a claimant to enter a vocational occupation is a vocational training or retraining course.

> Example: A job skills workshop that a claimant attends to learn interviewing techniques, resume writing, and job hunting tips is a vocational training and retraining course under the regulation.

Basic reading and mathematics skills training necessary for successful job performance are vocational training courses under the definition.

> Example: If a diesel mechanics-training program requires a claimant to have a basic mathematics course to enter the program, then that course is a vocational or retraining course.

Because most vocational training and retraining courses require a claimant to possess a GED, GED training is always a vocational training or retraining course. A claimant enrolled in GED training may be eligible for a vocational waiver if the training interferes with the ability to accept work. On the other hand, pursuit of a high school diploma is academic.

> Example: A claimant was attending high school to get his diploma. The Tribunal held that the course was academic. (98 0698, June 3, 1998)

D. Availability for Work during a Vacation Period or Other Recess

A claimant's availability for work during a vacation period or other recess depends in large part upon the claimant's availability status while attending the school or training program. If a claimant is available for work while attending the school or training program, then the claimant is also available when the school or training program is not in session, provided the claimant's circumstances have not otherwise changed. However, the claimant must be available for all shifts of work in the claimant's customary occupation during a vacation period or other recess. The claimant may restrict these shifts to temporary work if there is a substantial temporary field of employment for the claimant's services, and the claimant imposes no further work restrictions. (95 0036, May 3, 1995)

40.1 ACADEMIC INSTRUCTION

A. General Standards on Academic Instruction

Under AS 23.20.378(c), a claimant who attends an established school in a course of study providing academic instruction of ten or more credit hours per week, or the equivalent is not available for work and is disqualified from receiving unemployment insurance benefits. (95 0606, July 14, 1995)

However, the statute provides for a waiver of this disqualification for a claimant who has pursued an academic education for at least one school term, worked at least 30 hours per week during a significant portion of that time, and become unemployed from the claimant's most recent work due to layoff or job elimination. In addition, the claimant's academic course schedule may not prevent the claimant from being available for work. (95 0917, July 10, 1995)

B. Is the Claimant Attending an Established School?

The definition under AS 23.20.378(c) is a partial, not an exhaustive, definition. Virtually any school will satisfy it, including not only elementary schools, high schools, and institutions of higher education. (9227884, November 24, 1992)

However what constitutes an institution of higher education is defined by statute and is limited to institutions meeting that definition. The definition includes admitting only students with a certificate of high school graduation or the equivalent, conferring bachelors or higher degrees, and being a public or other non-profit institution.

The Commissioner ruled that although a claimant was taking an academic course of study leading to an associate's degree from Charter College, benefits must be allowed. (01 0859, August 20, 2001)

> "The Department therefore must declare that claimants who are attending Charter College, a *for-profit* institution, must not be denied benefits under AS 23.20.378(c). Regardless of its mission and the fact that it confers degrees, Charter College is not an "institution of higher education" under the statute. This is true whether students are taking what would normally be considered academic courses or not. "

Because the school does not meet the definition of an institution of higher education the academic training provisions in AS 23.20.378(c) do not apply. The training should be considered under vocational training provisions.

For a complete discussion of the difference between academic instruction and vocational training, see AA 40.05, C. Distinction between Academic Schooling and Vocational Training

Rehabilitation training to teach a person to correct such issues as substance abuse is not a school or training program under this statute. (97 2714, January 23, 1998)

C. Is the Claimant Taking an Academic Course of Study?

Only an academic course of study subjects a claimant to a possible disqualification under the statute. (9428269, September 19, 1994.) .

A claimant's educational objective and the purpose of the course of study must be considered together with the content of the course of study, not merely the number of credit hours of academic instruction, to determine if the claimant is attending ten or more credit hours per week. The statutory disqualification applies whenever the **overall purpose** of the course of study is academic, regardless of the mix of courses, so long as the total number of hours of attendance amounts to ten or more credit hours per week, or the equivalent.

D. Is the Claimant Taking Ten or More Credit Hours or the Equivalent?

AS 23.20.378(c) **disqualifies a claimant who attends an established school in a course of study providing academic instruction of ten or more credit hours per week, or the equivalent.** The phrase, "or the equivalent," in the statute means equivalent clock hours. (9426062, May 10, 1994) Use clock hours as a substitute for credit hours only if the credit hours are not standard semester hours. (96 0210, May 10, 1996)

> The Commissioner established policy stating, “When a claimant is enrolled in regular semester hours of credit through a public university, where there are no apparent anomalies as to special studies, etc., the number of credit hours will be the only consideration. The equivalence test cited in the statute need only be used in cases where the credit hours are not standard semester hours, are through a private school which might interpret hours differently or are impacted by other factors”. (96 0210, May 10, 1996)
>
> Example: A claimant was attending UAA receiving 16 credits for the semester. Two of his classes ran the entire semester, but three classes were condensed into periods of five weeks each, resulting in ten credits for the first five weeks and nine credits for the remaining ten weeks. The Tribunal denied the first five weeks and allowed the ten weeks. The Division appealed the decision to the Commissioner. The Commissioner reversed the Tribunal decision, citing that the five-week classes were “accelerated classes that have intense attendance hours for five weeks each. Because of that it is appropriate to apply the “equivalence” test and hold that the actual attendance in class time is the standard to be applied.” (10 1215, August 3, 2010)

Other factors that impact credit hours would be accelerated courses, high school classes, practicum classes and even required participation in distance learning and correspondence courses.

> Example: A claimant attended an Intermediate Russian Course at Northwestern University for 15 hours per week from June 21 to August 15. The claimant argued that she should not be denied unemployment insurance benefits because she only received eight semester credit hours when she transferred the credits to the University of Alaska. The Commissioner stated that the phrase, "or the equivalent," in AS 23.20.378(c) means equivalent clock hours of attendance. The Commissioner determined that the claimant's course attendance of 15 hours per week equated to 15 credit hours per week. Therefore, the Commissioner affirmed the denial of the claimant's unemployment insurance benefits because she attended an established school in a course of study providing academic instruction of ten or more credit hours per week, or the equivalent. (9229621, April 29, 1992)

> Example: A claimant was attending academic classes. One class was a non-credit pass/fail course for three hours per week. The Tribunal held that the class was the equivalent of a three-credit course. (98 0335, March 13, 1998)

Whether or not the particular school considers the claimant a part-time of full-time student is not relevant; the issue is the number of clock or credit hours under the statute (98 0067, January 30, 1998.)

> Example: A claimant was taking a practicum of forty hours per week, although she was only receiving seven credits. She was considered as attending school full-time by the Tribunal. (98 0301, March 5, 1998)

> Example: A claimant was attending Alaska Pacific University taking 12 credits in pursuit of a Master's degree. His class schedule was from 4:00pm to 9:30pm on Mondays and 4:00pm to 6:50pm on Wednesdays. In applying the policy set forth in 96 0210 (above), once the actual credit hours reach 10 credits, the equivalent credit hours are no longer considered. The Commissioner stated, "If the claimant's situation involves *either* enrollment in 10 credit hours *or* the equivalent, he meets the disqualifying provision of statute." (031898, September 16, 2003)

If the claimant is auditing a course or otherwise taking a course without receiving credit for it, the clock hours of attendance at that course are considered part of the total number of clock hours for the purposes of AS 23.20.378(c). (82H-UI-185, October 28, 1982)

If a claimant is taking independent study credits, allocate the independent study credits over the period of time that the school allows the claimant to complete them.

Because high schools do not assign credits based on hours of attendance, we use the equivalent hours of attendance to assign credit value. A high school student is not able and available for work if they are attending high school two hours per day, five days per week, because that is the equivalent of ten credit hours per week of instruction.

> Example: A claimant attended 2 high school classes for 3 hours per day, 5 days per week. The issue is whether the claimant is able and available for work while attending academic schooling of 10 credit hours or the equivalent. The claimant was attending 15 hours of attendance per week, equating to 15 credit hours per week. In denying benefits, the Commissioner held that the Department has adopted that class attendance hours are equivalent with credit hours per week. (95 3265, February 20, 1996)

E. Is the Claimant Eligible for a Waiver of Disqualification?

The 1989 amendment to AS 23.20.378(c) waived the disqualification for academic students with a proven history of concurrent work and school attendance. The worker's ability to attend school and work at the same time must be established. The waiver was intended for those "super-achievers" who had proven they could manage a schedule of full-time classes and work.

1. General waiver provisions

The disqualification for unavailability while pursuing an academic education can be waived for a claimant who:

- has pursued an academic education for at least one school term in the past 18 months prior to requesting the waiver;
- attended 10 or more credit hours of academic course work which required in person classroom attendance at a non-profit institution of higher education;
- concurrently attended school and worked at least 30 hours per week during 75 percent of the school term;
- separated from last employment due to lay off or job elimination and;
- is willing to alter their academic course schedule to accept full time work when their class schedule restricts availability.

To be eligible for an academic waiver of disqualification a claimant's course of study must:

- be attended at a non-profit institution of higher education;
- have an overall academic purpose or an academic objective;
- include credits for later use towards a degree or as a prerequisite to enroll in a degree program or is currently pursuing a degree or is enrolled in a degree program;
- have attended in person 10 or more credit hours of the equivalent;
- have established a recent history of working while concurrently attending school in the past 18 months and,
- have demonstrated this history of working while attending school for a significant portion, or 75 percent, of at least one school term in the past 18 months.

For a discussion of what is an "established school," "academic education," or "ten credit hours or the equivalent," see B through D above, respectively.

2. Recent history of concurrent full time work and school attendance

Recent history is defined as a time period in the past 18 months. A claimant must have demonstrated a credible ability to work while attending class in the past 18 months. Ideally it should occur in the current or prior term in which the waiver of availability is requested, however may occur sometime in the past 18 months.

> Example: Optimally, but not always the concurrent full time work and school attendance should occur in the semester prior to that in which the claimant requests benefits. In this case, a claimant worked full time and attended school in his most recent employment. In allowing benefits, the Commissioner determined that looking back nine months was not unreasonable to demonstrate the claimant's ability to work and go to school full time. (04 0450, May 17, 2004)
>
> Example: The Commissioner further clarified that a claimant must have a proven record of attending over 10 credit hours of academic schooling while working at least 30 hours per week sometime in the past 18 months. The Commissioner determined that more than 18

months is too distant in time to demonstrate a credible ability to work full time while attending academic instruction of over ten credit hours. (13 0087 April 19, 2013)

3. Academic purpose

- In pursuit of a degree with or without a definite graduation date;
- or enrolled in a degree program;
- or attending prerequisite courses to qualify for enrollment in a degree program;
- and the course of study is academic.

Example: A claimant was attending a course of academic instruction of more than 10 credit hours. She had previously worked fulltime while attending a computer school for about thirty hours per week. Since the computer school was not a course of academic instruction, it did not allow her to qualify for the academic waiver and the Tribunal held her unavailable. (97 0539, March 24, 1997)

Example: A claimant was taking courses at a community college which he intended to later apply towards a degree from another institution of higher education. The Commissioner established that the claimant was working towards an associate degree and must attend classes for well over a year to obtain that degree; we consider his training to be academic in nature. An academic course of study includes a program of instruction for an individual including a transfer credit program of instruction given at a community college, which is intended as credit for a degree from an institution of higher education. (94 9146, December 27, 1994)

4. Correspondence courses

A claimant who has attended online or via correspondence while working 30 or more hours does not qualify for a waiver of eligibility based on this school attendance.

Example: In 96 0766, June 25, 1996, the Commissioner held that participation in distance learning or correspondence courses does not serve to disqualify a claimant under AS 23.20.378(c). The inverse is also true. A claimant attending online studies or correspondence course not requiring classroom attendance, or attendance at specific times for online classes, does not qualify for a waiver of the academic schooling denial even though they may work full time while attending such courses. In addition, the statue

denies the waiver to any claimant who quits their last job to attend school, as is the case here.

The Commissioner further clarified in making this decision, by stating to be "pursuing an academic education" an individual must be "attending" a school and the defining language applied to both the main provision and the waiver provision. Correspondence training or schooling allows the student to adapt the training time to his or her schedule. Correspondence training time is flexible. Such training or schooling therefore does not demonstrate the student's ability to coordinate a class schedule with a work schedule.

5. Significant portion of the school term

A claimant must have demonstrated their ability to work while attending school for a significant portion of at least one school term. This must have occurred:

- in the past eighteen months and;
- for at least 75% of the duration of a school term.

The duration of a school term can vary depending on academic calendars. Each claimant's circumstances and schedule must be examined to determine if they established a credible history of working full time while attending school for a significant portion of the one school term.

Example: A claimant attended school in the past on a full time basis while working 30 or more hours per week. However the record shows that the work exceeded 30 hours for only three weeks of the school term. It was established that the claimant did not work the "significant portion of the time" as required by the statue to show a pattern of attending ten or more credit hours while working 30 or more hours a week for a significant portion of the school term. (95 3265, February 20, 1996)

6. Qualifying employment

- The last work the claimant performed full time, 30 or more hours a week, while concurrently attending school full time;
- separation from this employment must be due to a layoff or job elimination and;
- separation from this employment occurred in the current term or no later than the past eighteen months.

Volunteer work is not considered qualifying employment for the purpose of the statute because there is no employer-employee relationship established (9426532, June 9, 1994.)

> The Superior Court expanded upon the reasoning behind the requirement that the claimant must be laid off for lack of work in Bunn vs. State, 4FA-97-1435 CI, March 4, 1998, citing two purposes. First, to "preserve the integrity of the [unemployment insurance] fund by limiting claimants who are pursuing an academic education to those whose jobs were eliminated or who were laid off" and second "to allow those claimants who are otherwise 'unemployable' because their positions have been eliminated or were laid off to become 'employable' in another job through additional education. In contrast, a claimant who leaves work for good cause is still 'employable' in his/her field and does not necessarily need more education to become employable."

The job which a claimant worked while concurrently attending school is the qualifying employment. Subsequent employment after separating from this job cannot be considered for waiver eligibility.

> Example: The claimant attended 15 credit hours of academic instruction per week from January to May 8 at the University of Alaska. From 1990 to 1991, he had attended ten or more credit hours of academic instruction while he had concurrently worked full-time as a cashier/assistant manager for a truck stop. He voluntarily quit his job with the truck stop. Therefore, since he had not become unemployed due to layoff or job elimination, he was denied unemployment insurance benefits because he was attending an established school in a course of study providing academic instruction of ten or more credit hours per week, or the equivalent. (9226121, March 24, 1994)

> Example: A worker was working 30 hours or more per week and quit that job while pursuing an academic education. The worker then worked 30 or more hours per week at a between-school-terms job which ended at the beginning of the next school semester and returned to school for the next school semester. The Commissioner has held that the worker's circumstances would not meet this requirement for the waiver of the disqualification portion of the statute.

However, a claimant who has established a pattern of working 30 or more hours per week while pursuing an academic education, and who an employer has laid off at the end of a between-school-terms job not originally scheduled to end at that time, would meet this requirement for

the waiver when the claimant returns to school for the next school semester.

> Example: In 90265409, June 28, 1990 the Commissioner stated, (w)e believe the claimant's current unemployment must be due to a qualifying layoff while pursuing an academic education. For example, a claimant who holds a job while going to school, quits that job, takes a summer only job from which he is laid off and then returns to school is not eligible. But we do not believe that a claimant who has established a pattern of work and school should be disqualified just because he is laid off from a 'between terms' job, provided that the job was not originally scheduled to end at the beginning of the school term. In other words, if the job is simply part of an established practice of working while going to school, and taken with the intent to continue working while in school, the claimant should not be disqualified just because he is not attending school when the layoff occurs." (90 26409, June 28, 1990)

7. Rearranging class schedule to accept full time work

When a claimant's class schedule precludes their availability to work, they must be willing to drop or rearrange classes to accept full time work. A claimant must demonstrate that it is realistic and reasonable to drop classes or rearrange their class schedule to accept full time work.

> Example: A claimant was unwilling to abandon her academic course of study to accept an offer of work. The claimant attended 20 hours of academic high school instruction. She was a senior and planned to obtain a high school diploma, but was not required by law to attend high school. While she was attending her school, she had worked as a desk clerk an average of 38 hours per week. She was laid off from that job. Her school schedule permitted her to be available for full-time work in at least one regular shift in her customary occupation. In reversing the Tribunal's denial, the Commissioner held:
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> > The "academic" provision does require that the academic schedule ". . . not preclude full-time work in the worker's occupation . . ." But we do not think this means that the academic schedule must leave the worker free to take any and all shifts in the occupation ..... Moreover, we believe the Legislature intended that a claimant who establishes eligibility under AS 23.20.378(c) is available for work, unless there is some other non-training issue of availability. The provisions for waiving the disqualification would otherwise serve no purpose. It makes no sense to provide a means for

an academic trainee to prove his or her availability in school, while also insisting that the trainee agree to give up the schooling. We conclude that the claimant has established her availability for work. (95 0917, July 10, 1995)

Each educational institution's withdrawal policy, including withdrawal due dates and fees must be taken into consideration when determining if a claimant reasonably would be willing and able to withdraw from a course to accept full time work.

Example: A claimant was willing and able to rearrange her academic schedule in order to accept a fulltime job. The Commissioner held that, subsequent to the regulation change allowing this, she was available for work. (97 2115, October 21, 1997)

F. Disqualification Period

The disqualification period begins with the first week of academic instruction and ends with the week immediately before the first full week in which the claimant is no longer pursuing an academic education.

40.2 APPROVED VOCATIONAL TRAINING PROGRAM

Regulation: 8 AAC 85.200

A. General Discussion of Vocational Training

"Distinction between academic schooling and vocational training," which was formerly 1. below has been moved and is now AA 40.05, C. "Remedial and basic skills training", which was formerly 2. below has been moved and is now AA 40.05, C. 3.

1. General

A claimant who attends training approved by the director under AS 23.20.382(a) receives a vocational training waiver of availability. Under the statute, the claimant does not need to remain available for work nor to accept any offer of work during the period in which the waiver is in effect.

If a claimant is placed in training by a federal or state employment or training agency, the waiver requirements listed in 8AAC 85.200 (a) – (d) **do not apply**. This means the individual who is placed in training does not need to attend training full time, the training can be academic or vocational, it can be a home-study or correspondence course and the claimant may quit skilled work to attend.

When another state or federal employment or training agency is working with the claimant and has placed them in a program, the Department will cooperate and facilitate the school attendance by allowing a vocational waiver.

See AA 40.05(2) and (3) for more information

If a claimant does not receive a vocational training waiver of availability under AS 23.20.382(a), the claimant is not automatically disqualified from unemployment insurance benefits but must meet the availability requirements under 8 AAC 85.356 while attending the training. See AA 450.15 HOURS OR SHIFTS.

> Example: A claimant did not qualify for a vocational training waiver of availability. However, he was able to arrange his training schedule to permit him to accept full-time employment, and so the Tribunal held him available for work. (97 2287, November 12, 1997)

2. Home study or correspondence

A claimant cannot receive a vocational waiver of availability based on enrollment in a home-study or correspondence course. A claimant enrolled

in these courses must satisfy the availability requirements under 8 AAC 85.350(b). See AA 450.15 HOURS OR SHIFTS. However, independent study is not home study or correspondence. (See AA 40.05, B.2.c, Independent Study.)

3. Continuing eligibility requirements

a. Filing for benefits

A claimant approved for the vocational training waiver of availability must file week claimed certifications.

b. Withdrawal from program

If a claimant withdraws from a training program, the vocational training waiver of availability is revoked for the weeks affected.

c. Vacation or holiday

A claimant receives benefits under the waiver during any period of vacation, holiday, or other recess of two weeks or less. After two weeks, the claimant must conform to the availability requirements under 8 AAC 85.350(b). For a discussion of these availability requirements, see AA 5 GENERAL.

The claimant must reapply for the vocational training waiver of availability for any later period of attendance at vocational training course.

B. Did the Claimant Voluntarily Leave Skilled Work to Attend the Training Course?

A claimant may not be approved who quits skilled work to enter the training. In Knafel v. Department of Labor (1KE-93-20 CI, October 29, 1993) the Court held, "[T]he policy behind the vocational training waiver would be hindered, not furthered, by allowing skilled workers to quit their jobs and receive both unemployment benefits and vocational training."

Example: A claimant quit work because she could not afford childcare. After she had quit the job she was accepted into a training program to be an electrician. Because she did not quit the job to attend the training, the Tribunal held that she had met this portion of the statute. (98 2184, November 3, 1998)

Example: A claimant took a leave of absence from his job as an airline pilot in order to attend training in flying another type of aircraft. Since he had left skilled work to attend the training, the Commissioner held that he

was not eligible for a vocational waiver of availability. (98 1322, September 21, 1998)

4. Determination of unskilled work by DOT code

If there is a question as to whether an occupation is skilled or unskilled, the U.S. Occupational Analysis Division, which produces *The Dictionary of Occupational Titles*, has the expertise by which we can make an informed judgment.

> Example: A claimant held that her position as security monitor in a halfway house was an unskilled occupation. The Commissioner used the judgment of the U.S. Occupational Analysis Division in considering it skilled. (9322669 and 9322671, September 2, 1993)

To determine if an occupation constitutes “unskilled work" under 8 AAC 85.200(d), examine the 4th, 5th, and 6th digits of the claimant's occupational code. An occupation is considered "unskilled work," if the 4th digit of the occupational code is a "6," the 5th digit of the occupational code is either a "7" or an "8," and the 6th digit of the occupational code is either a "6" or a "7" (9322093, August 10, 1993.)

5. Determination of unskilled work by adjudicator's judgment

The adjudicator's judgment will override the use of the digits in determining if the occupation constitutes "unskilled work" (95 1382, July 20, 1995.) A strong indication of unskilled work is that the work is learned on the job, rather than requiring previous experience or training.

> Example: In the case above, the claimant's last work was a garbage truck driver. The DOT code for that occupation is 905.663-010. The 4th, 5th, and 6th digits of this occupational code do not define it as "unskilled work." The Commissioner held, "[The claimant] learned the position through on-the-job training. A common-sense view of that occupation leads us to conclude it is closer to an "unskilled" occupation than a 'skilled' class, but the common-sense view conflicts with the DOT code. Until a new policy based on a more objective way of judging an occupation's skill level can be developed, we will not entirely reject the long-standing method of applying the DOT code. However, we will not allow the DOT code to override a subjective judgment of skill level, where the subjective judgment appears to be more accurate and more in keeping with the remedial and work force development purposes of this regulation. This claimant's last work should be considered 'unskilled', and he should be eligible for the waiver of availability." (95 1382, July 20, 1995)

Example: A claimant left employment as a preschool teacher in order to take training as a travel agent. The Tribunal, in denying her the waiver of availability, said that both the DOT code approach and the Tribunal's own judgment showed that the employment was skilled. (97 2047, October 8, 1997)

Example: A claimant quit her job as a sales clerk to attend school as a hair stylist. In allowing benefits, the Tribunal held that the sales clerk job was unskilled, as her duties were limited to scanning items for payment and taking charge slips and cash for payment. Her only skill required was the ability to speak both Korean and English, which she could do because she was a native Korean. (99 0336, March 12, 1999)

6. Union apprentice workers

Union apprentice workers are considered unskilled until they reach journey-level status. Apprentice workers who are required to quit work to attend union-mandated training can be eligible for a vocational waiver.

Example: A claimant left his employment as a temporary roofer. He was an apprentice heavy equipment operator with the Union Local 302 in Anchorage. He had worked through the union for approximately two years. The union notified him that he was required to take union-sponsored training in HAZMAT and CPR, as well as other related subjects. The tribunal concluded that the claimant had a compelling reason to leave his roofing job to attend training that was required for his union apprenticeship program and to meet eligibility requirements for continued union dispatch. (02 1075, June 10, 2002)

C. Does the Claimant Need the Training?

A claimant's request to enter an apprenticeship training program can be approved. (88H-UI-096, August 8, 1988)

1. To determine if the claimant needs training to overcome immediate barriers to reemployment, examine the claimant's present skills in relationship to the demand for these skills in the labor market. If there was no demand for the claimant's skills, then assess the claimant's total training and experience in other occupations to ascertain if the claimant had other skills that may be in demand in the local labor market. "Training" in reference to the training gained by the claimant in other occupations is "that formal process by which a person gains the requisite knowledge and skills necessary to perform the duties in a particular occupation, and which are normally a prerequisite for that occupation." (87H-UI-141, October 13, 1987)

The term "barriers to reemployment" requires that the claimant be attending training for employment, and not solely to further an existing or projected entrepreneurial goal or project for self-employment purposes.

2. Training necessary to remain employed in customary occupation

Sometimes changes in equipment and procedures in the claimant's customary occupation threaten a claimant's continued employability in the claimant's customary occupation.
A claimant enrolled in an employer or union sponsored training program, who has established a work history in the occupation, can receive approval for periodic training necessary to remain in good standing. "Upgrade" or "refresher" training for a claimant with journey-level experience can be approved only if the claimant's failure to take the training would damage the claimant's employability. The presumption is that the claimant has sufficient training to be employable in the claimant's customary occupation, and approval of such cases will be rare. However, if the union directs the claimant to take the training, consider the sanctions that the union may impose, and the number of dispatches that the claimant may lose without the training.

> Example: A claimant was enrolled in a course to obtain a certificate for life boatman's endorsement. The endorsement is required by the Coast Guard and the State prior to completing two years of work as a steward or reaching 24 to 30 employment points. The claimant would not have been able to return to work without the course. The course lasted all day for two weeks. He was held eligible for the waiver of availability. (97 1953, September 17, 1997)

3. Does the claimant need training to end the claimant's work pattern in temporary, casual, or unskilled work and to increase the claimant's skill level, earning power, or work opportunities?

A claimant's desire to increase skill level, improve earning power or employment opportunities when the claimant already has sufficient skills does not satisfy the requirement

> Example: A claimant was approved by the Tribunal for a waiver of availability because he needed the training to end a pattern of seasonal work as a fish counter. The season was short and the work unskilled. (98 0286, March 9, 1998)

4. Is the claimant in training to receive a safety or health certification?

A claimant who needs training for a safety or health certification to obtain work or to remain employable in an occupation is allowed a vocational waiver of availability if otherwise eligible.

D. Is the Claimant's Course Taken on a Full-time Schedule?

The claimant must take the course on a schedule that will result in completion of the training course in the shortest reasonable time.

> Example: A claimant was not taking the course on a full-time basis because he could not afford to do so. He was not eligible for the vocational training waiver. (97 0488, March 19, 1997)

E. Is There a Surplus of Workers in the Local Labor Market Area in the Occupation in Which the Claimant Seeks Training?

The purpose of this requirement is to ensure the claimant's employability in the local labor market after the claimant finishes the training. In doubtful cases, check with the Research and Analysis section.

F. Does the Claimant Have an Aptitude to Complete the Training Course?

In most cases, the claimant's aptitude can be presumed. Only where it is clear that the claimant possesses no reasonable aptitude should the matter be considered, and then with due regard for the provisions of the Americans with Disabilities Act. It can, however, be reasonably inferred that a blind claimant does not have the aptitude to complete a course in calligraphy.

70 CITIZENSHIP OR RESIDENCE REQUIREMENTS

Law: AS 23.20.381(b)

> *Benefits are not payable on the basis of services performed by an alien unless that alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the application of the provisions of 8 U.S.C. 1153 or 1182 (Sec. 203(a)(7) or 212(d)(5), Immigration and Nationality Act).*

Regulation: 8 AAC 85.510

> *Benefits are not payable on the basis of services performed by an alien unless the alien satisfied the requirements of 26 U.S.C. 3304(a)(14) and AS 23.20.381(b) when the services were performed.*

A. General Discussion of Citizenship and Residence Requirements

Only citizens and aliens who have the authorization to work can legally work in the United States. An alien who does not have the authorization from the U.S. Citizenship and Immigration Services (USCIS) to work in the U.S. is not available for work. This authorization to work is specific documentation, not merely the filing of a petition, and the fact that the alien is in this country legally or otherwise does not mean that the alien is allowed to work. "Beneficiaries of approved or pending visa petitions are not PRUCOL (Persons residing in the United States under color of law.) . . . [T]he mere filing of a petition on an alien's behalf does not create a lawful status" (UIPL 1-86, cited in 9426853, June 28, 1994.)

Applicants for benefits must disclose whether they are U.S. citizens. Accept the claimant's statement of U.S. citizenship, unless there is positive evidence to the contrary. An alien claimant must show authorization to work in the United States to be available for work. Accept appropriate USCIS documentation indicating that the claimant has the authorization to work in the U.S. (For a description of acceptable USCIS documents, see the UIPM.

If an alien has applied for permission to work or renewal of that permission, the alien is not eligible to work until the application has been approved.

> Example: A claimant had a valid alien registration card that expired December 9, 1997. She sent in her registration in October, but did not receive the card until January 29, 1998, effective that date. The Tribunal held that she was unavailable for work between December 9 and January 29. (98 0629, April 9, 1998)

On the other hand, if a claimant furnishes a document from the USCIS that shows that the claimant has permission from the USCIS to work, the document is acceptable.

> Example: A claimant had applied for extension of his permission to work. He received a letter stating that the stickers indicating permission to work had not arrived, but that he was allowed to work until December, at which time he must have the sticker put on his card. The claimant did this and showed the card to the claims taker. The Tribunal allowed benefits throughout, as at all times the claimant was in possession of documents allowing him to work. (97 0173, February 13, 1997)

The USCIS classifies an alien as an immigrant alien or a non-immigrant alien. An immigrant alien is an alien who has been admitted to the U.S. for permanent residence and has the authorization to work without restriction. A non-immigrant alien is an alien who has been admitted to the U.S. on a temporary basis, and may or may not have the authorization to work, or may be restricted to work only with a particular employer.

B. Immigrant Alien

An immigrant alien whom the INS grants permanent residence in the U.S. has the authorization to work in the U.S., unless the work specifically requires U.S. citizenship. This alien is available for work.

C. Non-Immigrant Alien

A non-immigrant alien whom the USCIS grants temporary residence in the U.S. may or may not have the authorization to work in the U.S. **This claimant's wages are usable if the claimant was authorized to work at the time that the wages were earned.**

1. Blanket authorization to work

A non-immigrant alien who is authorized to work without restriction is available for work only between any dates shown on the alien's work authorization card.

2. Employer-specific authorization to work

A non-immigrant alien who has the authorization to work with an employer-specific restriction can only work for a particular employer. This claimant is not available for work.

> Example: A Canadian citizen works seasonally for an Alaskan employer. Her work authorization is specific to that employer for a specified period of time. Consequently she is not eligible to collect benefits while in the US and not working. (06 1206, September 12, 2006)

D. Foreign Student

A foreign student must, before receiving a visa, attest that the student has sufficient financial support while residing in the U.S. However, the student could, until December 15, 1996, apply for permission to work after attending school for one full year. Any wages that this claimant earned in such permitted employment are usable. After that date, the student is not available for work and wages earned after that date are not usable.

1. Student works after graduation

   A student may have received, until December 15, 1996, employment approval to work full-time in the student's field of study within 30 days of the student's graduation. Any wages that this claimant earned in such permitted employment are usable. After that date, the student is not available for work and wages earned after that date are not usable.

2. Foreign exchange student

   A foreign exchange student has the authorization to work only in unusual cases, usually with such restrictions that this claimant is not available for work.

90 CONSCIENTIOUS OBJECTION

Regulation: 8 AAC 85.350(b)

A claimant is considered available for suitable work if the claimant

(5) is willing to accept and perform suitable work which the claimant does not have good cause to refuse;

Law: AS 23.20.385(b)

In determining whether work is suitable . . . the department shall . . . consider . . . the degree of risk to the claimant's health, safety, and morals, the claimant's physical fitness for the work, the claimant's prior training and experience, and earnings, the length of the claimant's unemployment, his prospects for obtaining work at the claimant's highest skill, the distance of the available work from the claimant's residence, the prospects for obtaining local work, and other factors that influence a reasonably prudent person in the claimant's circumstances.

A. General Discussion of Conscientious Objection

Employment that poses a risk to a claimant's morals is not suitable work. In addition, a claimant is not required to be available for work which would require the violation of the claimant's religious convictions or moral scruples, the violation of a law, or require an act contrary to a recognized code of ethics. The claimant's conscientious objection must be genuine and the work to which the claimant objects must directly, rather than indirectly, conflict with the claimant's personal convictions. In the absence of a violation of law, a recognized code of ethics, or sincere personal beliefs, mere disapproval of types or conditions of work does not constitute a conscientious objection.

Example: The U.S. Supreme Court, in Frazee V. Illinois Commissioner of Employment Security, et al. United States Supreme Court, No. 87-1945, March 29, 1989, held that the Illinois Commissioner of Employment Security could not deny unemployment insurance benefits to a claimant who refused to work on Sunday for personal, as opposed to formalized, religious reasons. The claimant was denied unemployment compensation benefits, based on the grounds that the claimant was not a member of an established religious sect or church, and that he did not claim that his refusal to work resulted from a tenet, belief, or teaching of an established religious body. The Supreme Court reversed the judgment of the State Appellate Court stating that . . . "Membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization. Here [the claimant's] refusal was based

on a sincerely held religious belief. Under our cases, he was entitled to invoke the First Amendment protection."

However, the Court, in Thomas v. Review Board, 450 U.S. 707, 715 (1981), did note that ". . . an asserted belief might be 'so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause."

A claimant who has a genuine conscientious objection to work that directly conflicts with the claimant's religious convictions will have good cause to rule out the work so affected. If a substantial field of employment remains after ruling out the affected work, the claimant is eligible. However, if no field of employment remains, and the claimant is unwilling to be available for work that the claimant may conscientiously perform, the claimant is unavailable.

B. Moral Objections

As with religious restrictions, availability for work does not require a claimant to be available for work that the claimant honestly opposes on moral grounds. However, the compulsion to reject the employment is much less clear, since the claimant's beliefs are a matter of personal choice. To establish good cause for a moral restriction the claimant must show beliefs that are consistent and are in accord with some recognized moral code, such as membership in an organization that advocates the principles on which this objection is based.

The claimant's beliefs must be consistent and must be such as could impel the average worker to reject the same kind of employment. A belief based on some philosophical objection to the economic purposes of the employment, or a broad based objection that rules out many kinds of unrelated work, will not qualify as conscientious objections

C. Relationship of Work to Objection

The work to which the claimant objects must directly, rather than indirectly, offend the claimant's convictions. It is the claimant's burden to establish the reasonableness of the connection between the claimant's convictions and the prospective work. The mere supposition of a conflict is not sufficient.

Example: A laborer who is a strict member of a faith that forbids any contact with alcohol would have good cause for turning down work in a brewery. However, a printer who was a member of the same faith would not have good cause for rejecting employment on the grounds that the printer may at some point be required to print labels for liquor bottles.

105 CONTRACT OBLIGATION

An individual's normal field of employment may be narrowed by contract obligations.

> Example: Under the terms of a contract with the claimant's last employer, a claimant may be prohibited from accepting work in certain occupations.
>
> Example: A claimant's contract may require the claimant to be ready to answer work calls from the employer on certain days of the week.
>
> Example: An individual may be retained by an employer with the proviso not to offer the person's services to another employer.

Thus, contract obligations may raise the presumption that a claimant is not ready and willing to accept other work. **However, the claimant is eligible if these contract obligations do not cause such restrictions that there is not an immediate field of employment for the claimant.**

A claimant who is currently under contract is in fact employed or partially employed. If the claimant's services are at the disposal of an employer full-time, the claimant is not eligible. However, a claimant who is on call or standby is not fully employed unless the claimant's actual hours of work amount to full-time employment. Such a claimant may be presumed available unless other circumstances indicate a lack of readiness to accept full-time work.

An individual may be retained under a contract that obligates the individual not to accept other work or other work in the same line.

> Example: If a salesperson working part-time under contract is not allowed to accept other sales work and cannot or will not take other types of work, the salesperson is not eligible. However, a claimant may be under a contractual obligation and still assert a willingness to accept work in violation of the contract. If this assertion is credible, there is no restriction in fact.

A claimant who has accepted a written or oral contract of employment calling for the claimant's services in the future raises a question of availability between the time of acceptance and the time work is to begin. However, a claimant who is willing to accept immediate temporary work during the period is eligible so long as there is some field of employment for temporary work.

150 DISTANCE TO WORK

150.05 AREA OF RESIDENCE

A. General Standards for Availability

A claimant is eligible for unemployment insurance benefits so long as the claimant is available in the labor market and there is some substantial field of employment, even though there is no potential employment in the immediate area of the claimant's residence.

The claimant should not be expected to travel unreasonable distances to accept employment. The eligibility of a claimant who imposes a distance restriction depends on several factors, including the claimant's customary residence area, the customs of the labor market, and the accessibility of employment. In addition, the length of a claimant's unemployment and the claimant's work prospects affect any determination of availability.

The customary method for obtaining employment in the claimant's occupation is often an important factor. Claimants who are required to seek employment in person and live in a remote area may be unavailable. On the other hand, in occupations where in-person contacts are not the customary method of initially contacting employers, the claimant's availability is much less dependent on the locale of the claimant's residence, so long as the claimant is making the required effort and is willing to relocate to perform work. The potential availability of work in the immediate labor market area is not as determinative as the claimant's willingness to seek and accept work in the much larger labor market that the claimant's occupation provides.

- A claimant must be willing to seek and accept work in the general labor market where the claimant lives, although not necessarily in the immediate area of the claimant's residence;
- A claimant must be willing and able to travel the customary distance to seek and perform work in that area, unless the claimant has a compelling reason not to conform to the customary pattern; and,
- A claimant must be accessible to a substantial field of potential full-time employment.
- In no case is a claimant required to relocate in order to seek employment.

B. Customary Residence

1. Definition

A claimant's customary residence is the area in which the claimant maintains a permanent home and from which the claimant either commutes daily to work or travels to a job site for extended employment. It is not a requirement that a claimant had worked in the immediate area of the claimant's residence, and it is not necessarily a requirement that there be potential employment in the immediate area of that residence.

2. General

A claimant is available so long as the claimant is willing and able to accept work within the customary pattern for the residence.

C. Accessibility

1. Customary address remote

The fact that the claimant's residence is remote or that the claimant has customarily worked in areas other than the area surrounding the claimant's immediate residence does not make the claimant ineligible for unemployment insurance benefits. A work history in the area of a remote claimant's residence, coupled with the length of the claimant's residency, is usually conclusive evidence of the claimant's availability.

> Example: The claimant lived in Quethluk. She was employed there during the school term for the Head Start program, and intended to return to work for that employer in the fall. During the summer months, she had no opportunity for employment because there were no other employers in the village. The claimant had resided in the Quethluk area for 29 years and had earned all her wage credits for unemployment insurance benefits in that area. In finding the claimant available, the Tribunal held that a claimant is generally required to remain available only in those areas in which the claimant has earned wage credits. (79C-238, September 14, 1979)

2. Customary return to remote address

Workers are often employed seasonally in one area, and return to another residence at the end of the season. The fact that such claimants live in areas other than where they are customarily employed during the off-season does not necessarily make them unavailable.

> Example: The claimant had been working as a marine deck officer for 30 years. He had been residing in Palm Desert, California, for

about a year. The California Unemployment Insurance Office indicated that there were no employment opportunities for marine deck officers in the local labor market. The office certified that the claimant was available and was seeking work. During his 30 years working as a marine deck officer, the claimant had never maintained a residence in the same area where he worked, but always sought and obtained employment by using the telephone. He was willing to work anywhere in the world and was available for other related occupations. In finding the claimant available, the Commissioner held that the claimant had never worked in the same area in which he had his residence and had been seeking work by the customary method of obtaining employment as a marine deck officer. (9120262, June 24, 1991)

3. Customary address not remote

a. General

Claimants who live in a non-remote area may be employed either in work to which they commute and return at intervals, such as employment on the North Slope, or fishing vessels, or the like; or they may be employed in work to which they travel by some form of urban transportation. Some occupations in some locations require that the claimant be available for either condition. Generally, a claimant whose unemployment is of short duration need only be available for the type of transportation arrangements in which the claimant earned wage credits --- that is, a claimant whose work was at remote locations to which the claimant commuted may for a reasonable length of time be available only for that type of work, if it is currently available. If it is not currently available or if the claimant's unemployment lengthens, the claimant must be open to other possibilities.

b. Commuting

A claimant must conform to the customary commuting patterns in the labor market, unless the claimant has a compelling reason not to conform. The size of the labor market is not controlling, because claimants in a specific area may commute only a fraction of the actual labor market to seek and perform work. Claimants in a labor market that covers a large geographic area will generally travel longer distances, but this generalization is not absolute, and the claimant is required only to conform to the customary pattern of the residence area and the occupation.

Example: A claimant lived in Eagle River, and wished to accept work only in Eagle River. Since Eagle River residents

customarily commute to Anchorage for employment, the Tribunal held that she was not available for work. (99 0708, April 23, 1999)

If the worker has earned wage credits in work that required commuting, unless the worker has a compelling reason for ruling out such work, the worker is not available. However, as usual, the length of the claimant's unemployment is a consideration, and a claimant may be given a short time to obtain work in the diminished labor market area if the claimant's work history and employment prospects justify it.

Example: A construction worker in Fairbanks may refuse to take a job on the North Slope because the worker desires to be closer to family, even though a large percentage of dispatches from the workers union local in Fairbanks are to that area. If the worker's reason for such refusal is not compelling, and the worker has previously worked at jobs that require commuting, the worker is not available.

D. No Permanent Residence

The lack of a permanent address does not impair a claimant's availability so long as the claimant can be contacted and can readily respond to referrals to work. If a claimant uses a General Delivery address or the address of others, the claimant is responsible for promptly receiving and acting upon the mail. A claimant who fails to do so, for whatever reason, is considered unavailable, unless the failure to receive mail can be traced to failure of the postal service.

A claimant without a permanent address who travels from place to place to seek work is required to be available in other locations outside the claimant's current address where work opportunities exist, unless the claimant has clear prospects in the community.

E. Change in Residence

An availability issue is always raised during a claimant's preparation to move and moving to a new location. If the claimant is not moving until some future date, and there is a field of employment for temporary work in the claimant's occupation, and the claimant's preparations do not prevent the seeking and accepting such temporary work, the claimant is available.

A claimant is normally not available during the period of the actual move to the new location. However, a claimant who is moving to seek work and meets the availability requirements while traveling is available. A move to accept a bona fide offer of work is similarly covered.

A claimant who is registered for work with the employment service must advise the office of a change in address within a reasonable period of time. If the claimant reports the address change when filing the next continued claim, no disqualification will be imposed. Even if the employment office is not advised promptly of the claimant's address change, if the claimant leaves a forwarding address with the post office and the claimant is able to be promptly contacted under that arrangement, no disqualification will be imposed for failure to maintain an adequate address.

When a claimant relocates out of state, they must register for work in the state in which they are residing. See AA 160.3 “Registration for Work.”

F. Requirement to be Contacted

1. Address

Registration with the employment service is a requirement for most claimants. To fulfill registration requirements, a claimant must register and post an online resume in AlaskaJobs. The purpose of the registration requirement is to expose claimants to offers of work. It follows that a claimant who cannot be contacted for work is not available, if the inability to contact the claimant is due to the claimant's own fault or negligence.

A mailing address is the basic requirement. It need not be the claimant's residence address, but it must be an address that allows the claimant to respond promptly to offers of work. A claimant who leaves the address of a friend, intending to pick up mail every other week, has not provided an adequate address. In addition, a claimant who makes a special arrangement to pick up mail at another address is bound by that arrangement until the claimant gives notice that the arrangement is no longer in effect.

Example: A claimant moved from her grandmother's home in Anchorage to Wasilla. She returned to Anchorage every two weeks to check her mail. She did not check on her mail by telephone, due to the high cost of long distance calls. Her grandmother filed her continued claims for her. When she did check her mail, she found and responded to an appointment notice with the Anchorage Reemployment Services office, changed her mailing address to Wasilla and rescheduled her missed appointment. In denying benefits, the Tribunal held that the claimant knew or should have known that she needed to be available to be contacted by the employment service and that picking up her mail only every other week did not meet that requirement. (99 0684, April 16, 1999)

2. Other methods of contact

A claimant is not required to give a telephone number or other method of contact in addition to a mailing address. However, additional methods of contact may support a finding of availability in cases where the claimant's address raises a question of accessibility to the labor market.

Example: A worker employed in the construction industry may live at a remote address where mail service is sporadic. However, the worker is in contact with the union by radio communications and can respond promptly to an offer of work. The worker's availability is not hampered by the remote address.

3. Frequency of mail service

In bush areas, mail service may be infrequent or subject to delays caused by weather. So long as claimants who live in such areas can respond reasonably promptly to an offer of work, they will be considered available, since the frequency of mail service is beyond their control. Mail problems due to weather do not raise an availability issue.

G. Transportation

1. General

A claimant must have some form of transportation that will make the claimant available to the labor market area.

Example: In 75A-111, the claimant had no private transportation and relied on public transportation that was available to the major centers of the neighboring labor market area. The claimant's availability was questioned when she precluded a job in the suburb of Bensonville because public transportation was not available to that area. The Tribunal held that the claimant's restriction did not impair her availability to the major centers of her labor market area.

Example: In AW-721, the claimant was found ineligible based on her reluctance to conform to the customary travel patterns, even though some field of employment remained to her. She lived with her husband on an Air Force base some 26 miles from the nearest city and substantial labor market area. Although she had a car, she still stated that she was available for work only on the Air Force base due to her lack of transportation. Public bus transportation was available but she objected to using it because of the long hours involved. The Tribunal held that her non-compelling restriction removed her from the labor market area where work existed for her to a far greater degree than at the Air Force base.

2. Transportation periodically unavailable

As a general rule, a claimant is required to be available during the customary hours and for each working day of the week. However, a claimant who cannot obtain transportation to work during some part of the customary working hours in the occupation is eligible if the occupation entails shift work, and the claimant has a reasonable expectation of employment during the hours the claimant is able to arrange transportation. But if the only available work is performed during the hours ruled out by lack of transportation, the claimant is ineligible even with a compelling reason.

Example: In AW-285, the claimant, a waitress and fry cook, normally commuted 21 miles to her job. When her husband took an out-of-town job, she was forced to quit her employment because of lack of transportation. She did not drive, and public transportation was not available. When her husband returned, she was again able to ride with him during regular work hours. However, because new employees in the claimant's line of work normally draw the least desirable shifts or even split shifts, she was held unavailable because there was virtually no potential field of employment under her circumstances.

3. Regular lack of transportation

If a regular lack of transportation makes the claimant unavailable on a specific working day or days of each work-week, there is a presumption that no field of employment remains for the claimant.

4. Single occurrence of no transportation

A single occurrence of lack of transportation will not be disqualifying unless the claimant missed an offer of new or continuing work. Review of the claimant’s customary work week will need to be examined to determine if the restriction made the claimant unavailable.

Example: In 80H-20, the claimant's car was disabled by extreme cold, so the claimant hitchhiked to Fairbanks but arrived too late to file his bi-weekly report. The Commissioner held, "It is reasonable, given the brevity and emergency nature of [the claimant's] circumstances, coupled with the absence of any missed employment opportunities, to hold that [the claimant's] attachment to the labor force was not unreasonably restricted.

H. Restrictions on Transportation and Commuting

1. General

- A claimant who has good cause for restricting the geographical size of the potential field of employment is eligible for unemployment insurance benefits so long as some measurable amount of potential employment exists.

- A claimant who does not have good cause for restricting the geographical size of the potential field of employment is ineligible for unemployment insurance benefits if the claimant's restriction limits the potential field of employment to any measurable degree.

> Example: In September a claimant quit his last employment as a laborer because it was on the east side of Nome and he had no transportation; it took him 25 minutes to walk; and a taxi cost $3. He then injured his ankle and was unable to work until February. In finding him unavailable for work, the Tribunal held that the claimant had restricted his labor market for a non-compelling reason, in that the cost of a taxi was not unreasonable in view of his hourly rate of $18/hour. (98 0070, February 3, 1999)

2. Compelling restrictions

For a complete discussion of compelling circumstances that provide good cause for restrictions as to the time involved in travel, and the availability and expense of transportation, see SW 150.05, "Factors in Daily Travel to the Job Site." A claimant who has good cause to refuse a particular job on the basis of transportation cost, time, or availability, is not necessarily ineligible under the A&A provision. A determination of good cause will make the claimant eligible if some field of employment remains.

150.1 TRAVEL

Regulation: 8 AAC 85.353

(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 the 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 which begins no later than14 days 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; or

(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 travel; or

(4) attending in person a pre-arranged job interview.

A. General

1. An issue is raised when a claimant travels away from their area of residence. There is a presumption the travel makes the claimant less available for work. The travel raises a question about the willingness of the claimant to seek and accept work while traveling in a new area.

> "The purpose of the (travel) provision is served if it is invoked whenever a claimant becomes, by virtue of his travel, less accessible to the normal labor market surrounding the area of his residence" (9026272, April 11, 1990).

The purpose of the Employment Security Act is to enhance the economic security of persons who are involuntarily unemployed. In order to fulfill this statutory objective, it is not unreasonable to require claimants to be within the area of their normal labor market during the regular workweek. If a claimant travels for reasons unrelated to his work search, he runs the risk of being unable to promptly respond to job offers. This risk clearly runs counter to the statutory purpose of enhancing the employment security of the unemployed. (3PA-84-28, Henderson v. Employment Security Division, January 7, 1988)

2. A claimant, whose travel would be disqualifying under the travel regulations, is ineligible only if the travel is during their customary workweek.

B. Travel in Search of Work

A claimant traveling in search of work is considered available for work if:

- The claimant is available for and willing to accept work at least five days of the customary workweek while traveling;
- The claimant makes in person contacts with at least two employers, a local employment office, the local chapter of their union which has jurisdiction in the area, or in person interview that has been pre-arranged; and
- A reasonable effort to find work is made during each week of travel.

A claimant may travel from a large labor market to a smaller one to look for work if the work search is reasonable.

A claimant who travels to look for work must be willing and able to promptly accept an offer of work; promptly in this sense means within a reasonable report time for that occupation, not necessarily instantaneously. Furthermore, the claimant must be willing to relocate, if necessary, in a timely manner.

> Example: The claimant traveled to Seattle, Washington and applied with two employers and then traveled to Montana and applied as a Social Worker in a hospital. He was offered the position and was expected to begin nearly one month later. He contended that as a social worker, it is

not unusual for the hiring process to take 2-3 months due to background checks. In denying benefits, the Commissioner held that the claimant's restriction to taking 2-3 weeks to prepare once an offer was made was not realistically meeting the requirements of the statute to promptly respond to offers of suitable work (08 1407, December 9, 2009)

Example: The claimant traveled to Juneau from his residence in Anchorage to attend an annual travel industry convention. The purpose of his travel was to network and make personal contacts with vendors for future employment in Anchorage. The claimant was not looking for work in Juneau or available for work in Juneau. The Commissioner held that he was not available for work in the area of travel (07 1517, December 13, 2007)

If a claimant travels to multiple locations during a trip, they must make a reasonable work search and be willing to accept work during five days of their customary workweek.

Example: A claimant traveled over Labor Day weekend. On the return trip, his car broke down and he was delayed returning home. In finding the claimant ineligible, the Appeal Referee ruled, although the circumstances were beyond his control, the fact remains that the claimant was away from his labor market area and not available for work on a regular work day (76A-1182).

1. Reasonable effort to find work

If a claimant is traveling to search for work, they are required to make a reasonable effort to find work in the area of travel. (97 1623, July 31, 1997).

Example: A claimant left Anchorage and traveled to Michigan to visit family and seek work. He made 2 work search contacts the first week of travel, one the second week and none the final week in Michigan. The Tribunal ruled his solitary work search contact during the second week and lack of contacts during the third week did not meet the "reasonable efforts to find work" requirement (00 0263, February 25, 2000).

2. In person contacts with employers

The regulation specifically requires that a minimum of two employer contacts are made for each week of travel.

Regulations do not allow for alternative work searches other than in-person. Contacts with employers by telephone or email are not considered valid.

Example: The claimant traveled from Anchorage to relocate to Ohio. During the trip, she submitted resumes online to 20 universities across the nation. She also interviewed over the phone with the University of Florida. She stated that she was willing to drive to a job location if work would have been offered. In denying benefits, the Commissioner held that the claimant did not make any work searches in-person (04 1654, October 26, 2004.

Example: The claimant traveled to New York to visit family and friends. During his visit he looked at websites and sent emails to potential employers. The Tribunal held that he was not traveling in search of work or to accept an offer of work in that location (01 1543, September 7, 2001).

3. In person contact with Employment Service office

Claimants, whose work search is contact with an employment service office, must show that they followed the reasonable directives of the employment service office in seeking work. This could mean registering for work with the employment service in that area. In many states, a claimant may register for work online. However, the claimant must also make an in-person visit to the employment office in the area of travel.

Example: A claimant traveled to Juneau to visit his girlfriend. Although he visited the ESD office to seek employment, he limited his field of employment to temporary work only. In finding him unavailable for work, the Tribunal stated, “While some employment may have been available to the claimant on those terms, it is logical to conclude that his restriction reduced his labor market attachment to less than substantial.” (97 2158, October 10, 1997).

4. In person contact with the local chapter of a union

Union members seeking work through their union while traveling must take the steps prescribed by the union to be eligible for dispatch in the area of the claimant’s travel.

The claimant must show that they followed the steps required for dispatch in that area to establish that they made a credible work search.

A claimant, who travels outside the claimant’s normal labor market but still within the area of the same local union jurisdiction, must make themselves available for dispatch in the area of travel.

C. Travel for a Job Interview

A claimant who travels for a pre-arranged job interview in the week of travel will be considered available for work during that week. The claimant need only have one scheduled interview during the week to meet regulatory provisions.

D. Travel in Search of Self-employment

A claimant who travels in search of, or primarily in search of, self-employment is not searching for work within the meaning of the statute.

> Example: The claimant had traveled, largely seeking self-employment. In holding him ineligible for benefits while traveling, the Commissioner stated, "A claimant traveling for self-employment purposes does not meet the requirements of a work search for benefit purposes (9320855, March 30, 1993.) To subsidize such a work search could actually provide a competitive edge to claimants who would wish to compete in business with their previous employers who are paying the largest portion of the benefits." (97 0766, July 18, 1997)

> Example: The claimant traveled from Anchorage to Seattle from Monday through Thursday to negotiate a contract related to self-employment goals. Although the claimant argued that he was accessible to the Anchorage labor market by telephone, the Tribunal held that he was less accessible to the Anchorage labor market, and thus unavailable for work. (97 1209, June 19, 1997)

If a claimant is seeking work <u>both</u> as an employee and as a self-employed contractor they are actually broadening their employment opportunities rather than restricting them. This policy <u>does not extend</u> to claimants who travel <u>only</u> to seek or set up self-employment ventures.

> Example: The claimant traveled from her home in Anchorage to Washington, D.C. to meet with a company who was interested in hiring her to set up a conference and to possibly open another office for them in the D.C. area. When the claimant discovered the potential employer could not hire her immediately, the claimant sought work with other contacts as both a self-employed consultant or as a regular employee. The only purpose of the claimant's travel was to make herself available for work in an area to which she was willing to relocate. The Commissioner held that the claimant met the requirements of the statute and regulation in traveling to "search for work." (99 0423, May 28, 1999)

Availability while Traveling for Reasons Unrelated to a Search for Work section removed.

E. Travel in Search of Work through an Area where the Claimant Cannot Accept Work

A claimant who travels in search of work through an area where the claimant cannot accept work, for legal or other reasons, is not available for work, regardless of the claimant's efforts to locate work.

> Example: The claimant traveled to Canada to look for work and to be near her boyfriend. She did not have employment authorization to work in Canada. She looked for work and planned to apply for a temporary work permit in Canada if she was accepted for the job. The Tribunal held that her work searches in Canada did not meet the requirements of availability while traveling (98 0493, April 3, 1998).

F. Traveling to Accept an Offer of Work

Regulation: 8 AAC 85.353(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.*

A claimant may travel for up to seven days to accept an offer of work. The offer of work must be bona fide and the work must begin within 14 days after the claimant's departure.

1. The claimant must receive the offer of work before the claimant's travel begins (9223774, March 31, 1992.)

2. The claimant does not have to make a search for work while traveling to accept the offer of work, but, after the claimant has traveled for seven days, the claimant is not available for work.

> Example: The claimant traveled from Anchorage to Mississippi to accept work. It took him 10 days to travel. The Commissioner held under 8 AAC 85.353(d) (re-numbered), the claimant has only seven days to travel to accept work that is to begin within 14 days. (96 2479, January10, 1997)

G. Traveling to Establish or Return to a Residence Immediately Following the

Claimant's Discharge from the Armed Forces

Note that this exemption applies only to the armed services members, and not to their dependents.

1. Claimants have seven travel days to establish or return to their residence immediately following discharge from the armed forces.

   Example: The claimant was discharged from the military in Anchorage. A month-and-a-half later, after trying to find work in Alaska, he relocated to Sultan Washington. The Tribunal held that because the claimant did not immediately travel after his discharge, he did not meet the travel provision for former military personnel. However, the claimant was available for work because he did search for work in the week of his travel (99 0353, March 12, 1999).

2. Claimants do not need to search for work while traveling to their residence, but after they have traveled for seven days, they are not available for work.

H. Availability after More than Four Weeks of Travel

The Commissioner has held that a claimant who travels in search of work and makes a reasonable effort to obtain work in the area of the claimant's travel is available for work for no more than four consecutive weeks of travel (83H-UI-004, January 27, 1984.)

The four-week period begins with the first week in which the claimant travels out of the claimant's normal labor market area.

Because the limitation applies only to consecutive weeks of travel, this limitation ends when the claimant reopens a claim in the area of the claimant's travel, or when the claimant returns to the claimant's normal labor market.

I. Travel While Under a Waiver of Availability

Law: AS 23.20.378(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

(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 section 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.

To be eligible for a waiver of availability while traveling, the claimant must have filed a compensable claim immediately prior to the need to obtain medical services, survival hunting or fishing, jury duty, or to attend the funeral of an immediate family member.

Example: The claimant traveled from Kwigillingok to Anchorage to visit his infant son in the hospital on the advice of his doctor. As the claimant had worked the previous week, he was not in compensable claims status. He was gone the entire week and did not look for work in the area. He was not available for work in the week. (97 0537, March 21, 1997)

A claimant who must refuse an offer of suitable work due to any of the reasons for the travel listed above becomes ineligible for this waiver of availability.

A claimant who travels for the purposes above does not need to be available for work during each week, so long as the claimant properly files Week Claimed Certifications. No other availability issues may arise during a week in which the availability has been waived.

For a discussion of the waiver of availability due to illness or disability, see AA 235.05 GENERAL.

1. Travel to obtain medical services

a. The claimant must be traveling to obtain medical services for the claimant personally, their spouse or for a dependent.

> Example: The claimant accompanied her great-grandmother, who had broken her hip, from Cordova to Anchorage. Since her great-grandmother was not a spouse or dependent, the Tribunal held that the cause for her travel was not allowable under the statute. (97 2702, January 14, 1997)

b. The travel waiver lasts until the claimant returns home or stops receiving treatment.

c. The claimant does not necessarily have to travel to the nearest location offering the required medical services. The only requirement is that required medical services are not available in the area of the claimant's residence.

> Example: The Community Health Aide in Venetie sent the claimant to Fairbanks for medical treatment not available in Venetie. (98 0501, March 27, 1998)

The fact that appropriate medical services are available in the claimant's area of residence, but the claimant **chooses** not to use them, does not make the services unavailable (02 2164, February 21, 2003).

d. The fact that appropriate medical services are available in the claimant's area of residence, but are more expensive, does not make the services unavailable. (98 1071, May 22, 1998)

e. It is not necessary for the claimant to travel by the fastest available means of transportation.

> Example: The claimant traveled on December 8 by ferry from Kake to Juneau for medical appointments on December 11. He arrived the same day, and remained until December 15. He did not want to travel by air because of poor weather conditions. (98 0077, February 4, 1999)

f. The claimant must furnish the name and address of the provider of the medical services, as well as the date that the claimant received the medical services, to the claimant's UI Claim Center.

g. If the claimant is unable to work due to their illness or medical treatment when they return home, they may qualify for a 6-week illness provision. See AA 235.05 General.

2. Travel to hunt or fish for survival

   a. The claimant must be eligible for the survival hunting and fishing waiver of availability (9026272, May 1, 1990.)

   b. The claimant's travel time to the area or from the area where the claimant performs survival hunting and fishing must be reasonable in view of the facts.

3. Travel to serve as a prospective or impaneled juror in a court

   See AA 370, B. Jury Duty and Service as a Witness

4. Travel to attend the funeral of an immediate family member

   See AA 155.35 ILLNESS OR DEATH OF OTHERS for the definition of "immediate family member."

   The period of unavailability may be no more than seven calendar days. The disqualification under this section begins in the week in which the travel or unavailability exceeds seven calendar days.

J. Travel in Connection with Approved Vocational Training

A claimant who travels in connection with approved vocational training does not need to conform to the requirements under 8 AAC 85.353.

1. The claimant does not need to meet the availability for and refusal of suitable work provisions under AS 23.20.378 and AS 23.20.379.

2. The claimant does not have to file a compensable claim prior to the travel.

3. The claimant does not become ineligible for this waiver of availability if the claimant must refuse an offer of suitable work due to the travel.

4. The travel time to and from the training facility for a claimant must be reasonable in view of the facts.

   Example: The claimant moved from Anchorage to Wasilla to attend approved training. She spent one week packing and the second week transporting her belongings by car to Wasilla. The claimant admitted that her activities were so time consuming that she would not have been able to accept any offer of work. Since the purpose of her travel during the second week was to attend approved training, she was not required to be available for work in that week

in order to be eligible for payment of benefits. (97 0341, March 10, 1997)

Example: The claimant traveled from Kasilof, Alaska to Fairbanks, Alaska to complete JTPA/TAA school paperwork and to meet with his counselor. The claimant did not explore the possibility of completing these transactions by telephone, mail, fax or e-mail. His training was scheduled to begin four weeks after the period of travel. In denying benefits, the Tribunal held that the travel was not shown to be required nor was it immediate to the start of school. (00 0008, January 28, 2000)

K. Travel to a Foreign Country

Law: AS 23.20.085:

(a) The department shall enter into reciprocal arrangements with appropriate and duly authorized agencies of other states, or of the federal government, or both, so that potential rights to benefits under this chapter may constitute the basis for payment of claims by another state or by the federal government and potential rights to benefits accumulated under the law of another state or of the federal government may constitute the basis for the payment of claims by this state. . . .

(c) In this section, the terms "other state" and "another state" include any state or territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Canada, and where applicable include the federal government.

1. Under Alaska law, a claimant who travels in any country that does not have an agreement with the United States for taking reciprocal claims cannot establish availability for work unless the travel is for an allowable reason under 8 AAC 85.353(b).

In Commissioner Decision 8925758, July 17, 1990, the Commissioner states in part:

> The work registration of travel claimants may be deferred, but it is not logical to consider a claimant available for work while traveling in a country which has no agreement with Alaska for taking reciprocal claims, and in which, as a consequence, he could never establish his availability for work under Alaska law. The claimant therefore made himself unavailable for work under the Alaska Employment Security Act while traveling in Australia and New Zealand.

Example: A claimant who worked as an investment counselor traveled to Jerusalem, Israel, from September 15, 1998 to December 6, 1998. While in Jerusalem she worked with her investment clients there two to three days each week. The claimant argued that she should be allowed benefits while in Jerusalem because she was traveling for her job. Citing the 8925758 case, the Tribunal held that the claimant was not available for work while in Israel. (99 0091, February 18, 1999)

Example: A claimant moved to Japan with her military spouse. The claimant argued that she paid unemployment insurance taxes while working in Alaska, she was a resident of Alaska, and she was available for work while in Japan. She believed she should be allowed unemployment insurance benefits while residing on a military base outside the United States. In denying benefits, the Tribunal held that while the claimant may be searching for work, she had removed herself from an area served by an employment service. The Tribunal also held that benefits could not be paid to claimants residing abroad in states or countries that do not have a reciprocal agreement with the State of Alaska, Department of Labor. (98 1980 & 98 2020, September 28, 1998)

Therefore, any travel outside the United States and Canada during the claimant's customary work week makes the claimant ineligible for the entire week of the travel unless the claimant meets the conditions in section (3) below.

2. Travel out of the country is adjudicated as a reporting issue, not an availability issue. The issue is resolved under the provisions of AS 23.20.085.

A claimant's availability is addressed on a week-by-week basis. As defined in section (1) above, if the country of travel does not have a reciprocal agreement with Alaska to pay benefits, the travel and time spent in the area will be addressed under a reporting issue. If a claimant files a continued claim for benefits from another country for weeks they were not in that country, it doesn't necessarily mean that they are not eligible for those weeks. The claimant will not be denied solely based on where they were physically located when they filed.

Example: In 03-2727 (January 8, 2004), the claimant traveled to Korea on 10/19/03 and returned 11/11/03. While in Korea, she filed for the weeks ending 10/11/03 and 10/18/03. In allowing benefits, the Tribunal held that the claimant was in Alaska during the weeks in question; thereby available for work and eligible for these weeks.

3. A claimant will be considered available for work if the claimant travels out of the country for an allowable reason as set forth in 8 AAC 85.353(b). To be eligible the claimant must be back in this country when it is time to file for the period of travel in a foreign country.

    Example: A claimant who worked as a commercial pilot traveled from Anchorage to Hong Kong for a job interview. The job was based in Anchorage. While Alaska does not have an agreement with China for taking reciprocal claims, the tribunal held that "it makes little sense to deny [the claimant] benefits considering his particular circumstances." The claimant traveled to Hong Kong only because that is where the employer decided to hold its interviews. This is not the same as a person who travels to a foreign country for the express purpose of residing there or seeking employment for an extended period. (01 0333, March 15, 2001)

150.15 RELOCATION

A. General Discussion of Relocation

A claimant who relocates must be available for work in the new location. The claimant must be willing to immediately adjust to conform to the prevailing work patterns of the new labor market if they are significantly different from those in the claimant's former location.

As is true with travel, a claimant who relocates to any country that does not meet the definition of AS 23.20.085(c) cannot meet reporting requirements under that statute (8925758, July 17, 1990.) This is true even if the claimant is able to work in the new location. The statute cited refers to countries that have an agreement with the United States for taking reciprocal claims; at this point only Canada has such an agreement. (See AA 150.1 A, General for a discussion of travel.) **Note that this situation is adjudicated as a 01 issue, reporting, and not as an A&A issue.**

Not every change in residence involves a qualitative change in the field of employment. There is no presumption that a claimant has restricted availability by a change of residence unless the new labor market actually lacks the same kinds of employment opportunities as the old labor market.

A claimant who moves from a smaller labor market to a larger one ordinarily is more accessible, and there is no issue other than those discussed below.

> Example: In 75A-409, the claimant moved from St. Michael's to Nuiqsit. The population of the two villages was comparable and the same types of employment, such as store clerk, nurse's aide, and teacher's aide, were available in both communities. The Tribunal held that the claimant's work prospects were as favorable in the new location as in the old location.

1. Customary occupation

A claimant with an established work history in a skilled occupation who moves to an area where that occupation simply is not in demand raises a serious question of labor force attachment. The amount of other employment in the new area and the claimant's willingness to adjust must be considered.

2. Willingness to adjust

A claimant who is willing to accept other work than the claimant's usual occupation may be eligible, so long as there is a market for the services that the claimant offers in the geographical area. However, because a claimant who has recently arrived in the labor market is less attached to it than a claimant who has resided there for some time, the claimant must

make a more concerted effort to obtain work and impose fewer restrictions.

3. Opportunities in new labor market

Even if a claimant asserts a willingness to accept any work the claimant is qualified to perform, the claimant is not eligible unless an adequate field of employment exists. The adequacy of the field of employment does not depend on its size or on the existence of actual job vacancies, but rather on the specific types of potential work available in relation to the claimant's training, qualifications, and restrictions. There is no set formula for determining an adequate field of employment

4. Attempts to find work

Claimants' attempts to find work are indicative of their availability in the new labor market, and may be decisive.

A claimant cannot move to a new labor market and restrict availability to a completely different labor market.

> Example: In the case of Landry vs. Commissioner of Labor (No. 75-3875, Alaska Superior Court 3rd J.D., May 10, 1976) the claimant had been laid off from his employment as an equipment operator in Alaska and moved to Lewiston, Maine. While residing in Maine, the claimant indicated that he would accept work only through the Alaska local of his union. Although suitable work as an equipment operator existed in the Lewiston labor market, the claimant would not accept it. The court held that the claimant was not available for work in the Lewiston labor market and therefore "was not available for work within the meaning and intent of the Alaska Employment Security Act."

B. Relocation to a Smaller Job Market

1. General

A claimant's move from a large labor market to a small labor market is relevant to the claimant's work force attachment. A claimant who has recently moved to a remote area is to be considered differently from a claimant who has established a work history in the area. It is also appropriate to consider the reason for the claimant's move in determining whether the claimant's restriction to the diminished labor market is with good cause.

The mere fact of a claimant's move does not necessarily make the claimant ineligible, even if it appears that chances for employment would

have been better in the former labor market. The claimant's customary occupation, willingness to adjust to the new labor market, the work opportunities in the new labor market, and the claimant's attempts to find work must all be considered.

If no substantial field of employment remains in the new labor market, the claimant is not eligible. However, the court held in Panigeo vs. ESD (Sup. Ct. 4th J.D. #4BA-82-60 Civil, January 4, 1983) that the department must look at the **job market** as opposed to **job openings** when determining unavailability. The court stated, "Market in this sense does not mean that job vacancies must exist; the purpose of unemployment compensation is to compensate for the lack of appropriate job vacancies. It means only that the type of service which an individual is offering is generally performed in the geographical area in which he is offering them." (Emphasis added)

Example: The Tribunal rejected the argument that a claimant who had moved from Anchorage to Tok was ineligible because she had moved from a large labor market area to a small labor market. According to the Tribunal, the rationale used in the original disqualification would result in the ineligibility of any claimant moving from Anchorage to any other area in Alaska. In this case, the Tribunal noted that Tok had a population of approximately 585 persons and was one of the areas in the state with an employment service office. In addition, the claimant was willing to accept any work for which she was qualified, was registered for work, and was seeking work in the Tok area, including the nearby villages. (81B-1783, November 17, 1981)

2. Quit to move

   a. Compelling reasons for quit and move

      If the claimant has a compelling reason for the move, such as health, then the claimant is eligible so long as some field of employment remains in the new residence.

   b. Non-compelling reasons for quit and move

      A claimant who quits employment to move for non-compelling reasons and moves to a substantially smaller labor market is not available for work.

         Example: In the case of Lind vs. Employment Security Division, Commissioner of Labor, Sup. Ct. Op. No. 2043 (File No. 3934), 608 P. 2d 6 (1980), Ms. Lind, who was experienced as a teacher, accountant, and bank teller, and who had worked in the Anchorage area as a teller and bookkeeper for five years, left her employment to

accompany her husband to Chignik Lake, which has a population of approximately 100 people. Her husband had been laid off from his job and owned a home in Chignik Lake. The claimant listed as possible fields of employment in the Chignik Lake area as teacher and other positions in the local school district, the cannery, a general store, the state's bilingual education program, and fishing with her husband. The claimant asserted that she was willing to go to work as soon as any job became available, and was expecting to work approximately two days per month as a substitute teacher. In holding the claimant ineligible, the court stated, "(O)ne important factor. . . is the fact that Lind moved from an area in which her services were in demand to a place where work is non-existent in her profession. The fact of such a move is relevant, in our opinion, to a determination of whether an applicant is genuinely attached to the labor market." Since there was at least some field of employment in the area, the court's decision was based on the fact that the labor market of Chignik Lake did not constitute a substantial field of employment for the claimant **in view of her recent move from a labor market area where her services were in demand**."

3. Move for compelling reason

A claimant who moves for a compelling reason may be available if there is some substantial field of employment available to the claimant. In AW-622, the Commissioner said, "In a case where an individual is unemployed and had no immediate prospect of employment in one area, if he moves to a new area he should be entitled to unemployment benefits, regardless of his motive for moving, if employment opportunity actually exists to which he may be suited, and if he makes reasonable efforts to take advantage of such opportunity.

Example: In McCarthy v. ESC, U.S. District Court. Div. No. 3, No. A-12694 (1957) the claimant sought work unsuccessfully in Kodiak for approximately two months as a truck driver or longshoreman after termination from his last employment. He then went to Long Island, eight air miles from Kodiak, because he could no longer afford to live in Kodiak. He had an arrangement that he would be contacted by skiff from Kodiak had long shore work developed. The Commissioner concluded, with the concurrence of the Court, "The claimant did not disqualify himself by removing himself from Kodiak to Long Island after looking for suitable work for two months in Kodiak, for the reasons (a) that he had reasonably shown that he could not find suitable work by staying in Kodiak, (b)

that he maintained a contact in Kodiak who would advise him had long shoring, the only work likely to develop, become available for him, and (c) that living costs were a minimum on Long Island, whereas he could no longer afford to live in Kodiak."

4. Move for non-compelling reason

A claimant who moves to a smaller labor market for a non-compelling reason is not available for work.

Example: In 80B-315, the claimant lived approximately ten miles off the road near Trapper Creek, Alaska. He traveled into town by snowmobile or by airplane. He had lived in the Trapper Creek area sporadically for about four years, but he had never worked in the area. There were a few small sawmills, some service stations, and grocery stores in the area. The claimant did not seek work with these employers. He was willing to work out of the Trapper Creek area, but only received mail approximately twice per week. The Tribunal held that the claimant was unavailable for work because of his non-compelling reason for living in the remote area, his limited accessibility to employers through the mail, and his generally passive attachment to the Trapper Creek labor force.

155 DOMESTIC CIRCUMSTANCES

155.05 GENERAL DISCUSSION OF DOMESTIC CIRCUMSTANCES

In the case of Arndt vs. State, (Sup. Ct. Op. No. 1729, File No. 3578, 583 P. 2d 799, 1978), the Alaska Supreme Court considered the eligibility of a claimant who was the mother and sole custodial parent of two small children. Her principal occupation was janitorial work. She limited her availability to the day shift only because she was on welfare and had been cautioned not to neglect her children or their school homework, and there were no state paid facilities in her community for childcare at night. The claimant argued that night shift work was not suitable for her because her unwillingness to work at night was compelled by her parental responsibilities. The court, in agreeing with her, emphasized that all of the suitability of work considerations contained in AS 23.20.385 must be considered before imposing an availability disqualification. In particular, the agency was required to place particular emphasis on paragraph (b) of Sec. 385, which mandates that the agency consider "other factors which influence a reasonably prudent person in the claimant's circumstances."

The court stated, "We conclude that a claimant who is a parent or guardian of a minor has 'good cause' for refusing employment which conflicts with parental activities reasonably necessary for the care or education of the minor if there exists no reasonable alternative means of discharging those responsibilities. Indeed, it is difficult to imagine a better cause for rejection of employment . . ."

The court further stated that a claimant must be accessible to work for which there is some demand in order to qualify for benefits. Accordingly the test of availability, as framed by the court, is that claimants must be willing to accept suitable work which they do not have good cause to refuse, and claimants must make themselves available to a substantial field of employment. If the claimant has shown availability for suitable work, it is the agency's burden to prove that this availability does not extend to a sufficiently substantial field of employment. In determining the claimant's field of employment consider all employment possibilities for which the claimant is reasonably fitted and willing to perform, not just those related to the claimant's principal occupation.

Arndt makes clear that it is of primary importance to determine whether or not the domestic circumstance is compelling before proper weight can be given to the effect of the circumstance on the claimant's field of employment. If the claimant in this case had not been found to have good cause for the restriction, as, for example, if she had reasonable alternative means of discharging her parental obligation, then good cause would not have been established. In that case, if the claimant's potential field of employment had been diminished to any degree, a disqualification would have resulted. The various types of domestic restrictions fall into four general groups:

1. **Where the claimant must devote full time to domestic duties and will not and or cannot forego them, the claimant is unavailable**, no matter how compelling the domestic circumstance. In these cases, the claimant is virtually eliminated from the labor force.

2. **A claimant who devotes full time to domestic duties but is able and willing to make other arrangements if work is found**, may be available. The ability and willingness of the claimant to make other arrangements, such as obtaining a babysitter, must be clearly established.

3. **Claimants who must devote only part time to domestic duties that are compelling** have eliminated a portion of their field of employment. If the domestic duties are truly compelling, and if the claimant has no reasonable alternative means of discharging them, and has not so narrowed the field of employment that there is no reasonable possibility of securing work, then the claimant is eligible. Such claimants must place no further non-compelling restrictions on the remaining field of employment.

4. **The claimant who, for non-compelling reasons, wants to devote time to domestic duties** is ineligible if the potential field of employment is reduced to any degree. This is true even if some field of employment remains. It must be clearly shown, however, that the restriction actually affects the potential field of employment. A restriction which affects hours not customarily worked in the occupation is not disqualifying, regardless of the reason for the restriction.

155.1 CARE OF CHILDREN, PARENTS, OR OTHERS

A. General Discussion on Care of Children, Parents, or Others

1. General

The general principles involved in care of children, parents, spouses, or others are:

- The obligation to provide the care must be a compelling one;
- There must be no reasonable alternative to discharging that obligation in person; and
- A substantial field of employment must remain.

2. Care of children

Parents have a legal and moral obligation to provide care for their children. The necessary childcare arrangements will vary depending upon circumstances, such as the health and ages of the children, and the availability of other family members to provide these services.

3. Care of parents

Adult children also have a moral obligation to care for parents in need of such care. However, that obligation may reasonably be expected to be shared among any available siblings.

4. Care of others

Claimants may need to care for ill or disabled spouses under much the same principles that apply to care of children. Care of more distant relatives must be closely examined to determine if the claimant was in fact the person most obligated to provide the care.

B. Does the Claimant Have Adequate Care Arrangements?

If a claimant has previously left employment because of problems with care of children or others, closely examine the claimant's availability to ensure that the claimant's present arrangements are bona fide and reliable.

Past care arrangements should not automatically be assumed to exist at the present or in the future. However, since during periods of unemployment care arrangements will normally end, lack of regular care arrangements is important only as it affects the claimant's efforts to seek work. If the claimant can show that arrangements could be made, the present lack of care arrangements would not

affect the claimant's availability. The claimant may be able to show that advance arrangements for care have been made with relatives, neighbors, or friends. If the claimant intends to place the person in a nursery school or day care facility, the claimant should know the location, hours, and costs of such facilities.

Example: The claimant, who had quit her job due to pregnancy and childbirth, refused to provide information about childcare providers for her three dependent children. Her principal occupation was as a cashier-checker, but she was restricting herself to a day shift only, rather than be available for any shift, as is standard in that occupation. Because there was no evidence that she had adequate childcare, she was held unavailable for work. (97 0373, March 22, 1997)

Care arrangements must be realistic and must allow the claimant to accept full-time work.

Example: In Coppock vs. State, (2KB-81-264civ, November 12, 1982) the claimant wished to breast-feed her child. She stated that she could take her child to the local daycare center if she found a job, and then have the baby brought to her for breast-feeding. However, the daycare center in her community would not accept a child younger than six months, and there was no indication that any employer would hire her under the arrangement she proposed. The Court upheld the Commissioner in finding the claimant not available.

C. Is the Claimant Restricting Availability Due to Care Arrangements?

Often a claimant is unable or unwilling to arrange for care where needed during certain hours or shifts, certain days of the week, or on weekends. As with any other availability restriction, the same two-fold test must be applied: Are the claimant's care obligations compelling? Does some field of employment remain? A claimant who is unable, for a compelling reason, to arrange care during specific times is eligible if there is some potential work in the claimant's occupation which does not require such hours.

1. Does some field of employment remain available to the claimant?

Even if the restricted hours are always required, so long as there is some other work potentially available which does not require such hours, and which the claimant is qualified and willing to perform, there is a basis for a finding of availability.

Example: In 80H-68, a registered nurse, living in Wrangell refused to consider employment at the hospital because midnight shifts were required. She did not wish to work that shift because she lived on a boat with her two children who previously had several close

drowning accidents. The only other potential employment in her occupation was with the two physicians in the community, who had no openings. The claimant was not seeking any other kind of work. The Tribunal said, "In a labor market already restricted by community size and number of employers, [the claimant] has further removed herself from a portion of that labor market by not being willing to accept work at the hospital. While her reasons would establish good cause for refusing work at the hospital, it further establishes that she does not have reasonable opportunities for prompt reemployment. Her additional refusal to consider other forms of employment confirms that she cannot be considered fully available for work in the Wrangell labor market."

2. Are the reasons for the claimant's restrictions compelling?

A claimant who has a compelling obligation to provide care, and who is unable to obtain such care, is available for work if a substantial field of potential full-time employment remains.

The claimant who, for a non-compelling reason, merely wishes to spend time with children or on domestic duties is ineligible if the potential field of employment is reduced to any degree.

If problems associated with care of others remove the claimant from the labor force, the claimant is not eligible, regardless of whether the circumstances are compelling. The various circumstances providing good cause for a restriction on the basis of care of others are discussed in SW 155.1, "Care of Children or Others" and those principles should be applied in determining whether a claimant's restriction is compelling.

Example: A worker wanted to stay home with her children, and stated that she could not accept a job immediately because of a lack of childcare. She was not available for work. (97 1862, September 17, 1997)

155.25 HOUSEHOLD RESPONSIBILITIES

Household responsibilities rarely provide a compelling reason for restricting availability. In addition, such duties may often be delegated to another family member. Often more basic restrictions, such as lack of childcare, underlie household duties or emergencies, and such restrictions must be examined closely.

A restriction on the basis of household duties will result in a finding of availability only if:

- the duties are compelling;
- it is not possible or reasonable to obtain the services of another person or agency to perform the necessary duties; and
- a sufficient field of employment remains to provide potential job opportunities for the claimant.

Household duties are usually either of an emergency nature or long-term obligations which prevent the claimant from being employed at certain hours or on certain days. A bona fide emergency does present a compelling circumstance, but usually results in the claimant's complete withdrawal from the labor force for the period of the emergency.

> Example: In 76A-427, the claimant was in a very good position on his hiring list, with employment virtually guaranteed to him upon reporting to his union hiring hall. However, he was unable to do so because of flooding which was threatening to his home. The claimant was held unavailable in this case because of his withdrawal from the labor force during the period in which his home was threatened, even though his reason for not being available was compelling.
>
> Example: In 80B-150 the claimant missed her report date because she was occupied during part of the day in thawing frozen pipes in her home. She missed no employment opportunities, as work in her occupation was virtually unavailable at that time of year. The Tribunal held that the claimant was available for work during the emergency. (The Tribunal did not address the question of whether the emergency actually required the claimant's attention, or whether some other person could have made the necessary repairs, because the Tribunal did not consider that the claimant's attention to the emergency affected her availability in any significant way. However, an unemployed claimant would not usually be expected to hire professional help for such a temporary emergency that could be handled as well by the claimant.)

A claimant's regular or recurrent household duties may rule out hours or days of work each week. Such duties when based on mere convenience, preference, or the wishes of the claimant's spouse, do not present a compelling reason for restricting the claimant's potential field of employment. A claimant's desire to fix her husband's meal at a particular time or a father's desire to spend time with his children after school, do not provide compelling circumstances. Domestic circumstances of this sort are compelling

only if the family's health or well-being are endangered and there is no one else available to perform them. The remaining field of employment must be examined if the claimant's household duties are found to be compelling.

155.35 ILLNESS OR DEATH OF OTHERS

A. Illness

A claimant who must devote full time to the care of another person because that person is ill or disabled is not available. If the claimant is available for employment only on certain hours or days because of the need to care for someone who is ill or disabled, the first consideration is whether the care is compelling. If the claimant is the only person who can reasonably be held responsible for the care, then the extent of the remaining field of employment must be determined. If a field of employment remains within the restrictions, the claimant is not eligible, no matter how compelling the obligation to provide care may be.

B. Death

Law: AS 23.20.378(a)(1)(E)

> *. . . An insured worked 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*
>
> *(E) is attending the funeral of an immediate family member for a period of no longer than seven days; . . .*

Regulation 8 AAC 85.354(d)

> *A claimant is eligible under AS 23.20.378(a)(1)(E) for the first seven days of attendance at the funeral of an immediate family member. A claimant is not eligible in a week if the total period of attendance at the funeral in that week and any earlier weeks exceeds seven days. In this subsection "immediate family member" means a person who is related to the claimant by blood, marriage, or adoption as a parent, child, spouse, brother, sister, grandparent, or grandchild.*

The claimant may travel to the funeral without affecting the exemption from availability. See AA 150.1 TRAVEL for a complete discussion of travel to attend a funeral.

In some cases, the impact of the death of a member of the claimant's immediate family may be such that it would disable the claimant. In such cases, the claimant might qualify under the illness provision. See AA 235 HEALTH OR PHYSICAL CONDITION

155.6 SURVIVAL HUNTING OR FISHING

Law: AS 23.20.378(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

(C) resides in the state and is non-commercially hunting or fishing for personal survival or the survival of dependents;

(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.

Regulation: 8 AAC 85.354(c)

A claimant who is non-commercially hunting or fishing for survival, or for the survival of dependents, under the conditions specified in AS 23.20.378, is not required to be available for work while obtaining sufficient food for survival. In determining whether the non-commercial hunting or fishing is necessary for survival, the director will consider the

(1) total income of the claimant and the claimant's spouse for the 12 months preceding the hunting or fishing;

(2) existence of an historical pattern of hunting or fishing for survival in the immediate area of the claimant's residence;

(3) existence of an established pattern of hunting or fishing for survival by the claimant; and

(4) existence of other resources that the claimant can use for survival under the circumstances.

A. General Discussion on Survival Hunting or Fishing

A claimant is eligible for the waiver of availability when survival hunting or fishing for themselves or dependents if:

- The claimant is in Alaska;
- There is a financial need for the activity;
- There is a historic pattern of survival hunting or fishing in the area of the claimant's residence;
- The claimant has an established practice of performing this activity; and
- There are no other resources that the claimant could use for food.

Further, the claimant must be in compensable claim status, and must refuse no offers of suitable work during the time in which the claimant is survival hunting or fishing.

B. Was the Claimant Survival Hunting or Fishing?

Survival hunting or fishing is not to be confused with **subsistence** hunting or fishing. **Subsistence** hunting or fishing is done to add these items to the food resources of the family or individual, as opposed to commercial hunting or fishing, sport hunting or fishing, or trophy hunting or fishing. **Survival** hunting or fishing is that which is done as a necessity, in order to prevent serious food deprivation.

> Example: A claimant hunted with a friend. She had other resources for food, and no previous historical pattern of survival hunting. She was held ineligible for the waiver of availability for work as she was subsistence, rather than survival, hunting. (9026272, April 11, 1990)

C. Was the Claimant in Alaska?

The claimant is only eligible for the waiver of availability if the claimant was survival hunting or fishing, in Alaska.

D. What Was the Income of the Claimant and Spouse in the Twelve Previous Months?

Although there is no specific standard, generally an income that is below the lower living standard for an Alaskan family in a non-metropolitan area would be considered as meeting the requirement of financial need for the activity.

E. Is There a Pattern of Survival Hunting or Fishing?

The pattern of survival hunting or fishing is in two parts. Both the community in which the claimant lives, and claimants themselves, must have such a pattern. Thus, a claimant living in Anchorage, for example, would not be eligible for the waiver, regardless of the claimant's previous involvement in this activity. Nor

would a schoolteacher coming from Outside to a remote village be eligible, even if the activity was prevalent in the community.

F. Are There Other Resources that the Claimant Might Use for Food?

Other resources include the availability of employment to finance food, Food Stamps or other Public Assistance, and other reasonable sources of income or credit.

G. Was the Claimant in Compensable Claims Status?

For a definition of compensable claim status, see AA 5 GENERAL. The claimant must be in compensable claim status to receive the waiver of availability under this statute.

H. Did the Claimant Refuse an Offer of Suitable Work while Survival Hunting or Fishing?

If the claimant refused any offers of suitable work because of engagement in survival hunting or fishing, the claimant is ineligible for the waiver of availability.

160 EFFORTS TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK

160.05 GENERAL DISCUSSION ON EFFORTS TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK

Unemployment Insurance is payable only to those who are in the labor force and willing to become re-employed. A claimant who is unwilling to work is obviously not available, and the basic inference to be made from controllable circumstances which render the claimant unavailable is that the claimant is **voluntarily** unemployed. However willingness to work is subjective and must be shown by objective factors such as personal appearance, restrictions, efforts to seek work, and the like, which are discussed under the various categories in this manual.

> Example: On the advice of her doctor, a worker quit her job at the Pioneer Home due to occupational stress. She believed that she could accept other work, registered with the employment service, and applied for two positions, both on the same day. She did not apply elsewhere within the two-month period because she was trying to take it slow. Based on the fact that she had not looked for other work and was "taking it slow" the Tribunal held that she was unavailable for work. (99 0522, April 13, 1999)

A mere preference for certain types and conditions of work is not indicative of an unwillingness to work. It is important to determine whether a claimant's expressed desire for a certain wage, for example, is a preference or an absolute restriction. The claimant's statement is a preference if, in the absence of the preferred condition, the claimant would still accept work meeting the prevailing conditions. **The claimant is expressing a restriction only where the condition imposed would have to be met in order for the work to be acceptable.**

Although action taken in response to referrals or offers of work may give a definite indication of the claimant's willingness to work, it is not necessary to test this willingness by actual offers of work. A claimant who imposes a restriction may not claim as proof of availability the fact that there was no definite refusal of the restricted work. The division is not required to perform the futile act of offering the claimant work that the claimant has already ruled out.

160.2 EMPLOYMENT

The fact that a claimant obtains employment is usually the best evidence that the claimant is in the labor force and interested in work. A claimant who imposes a restriction and then obtains work under that restriction has demonstrated both a willingness to work and the fact that at least some field of employment exists under the imposed restrictions. However, the fact that the claimant may obtain intermittent or part-time work under the claimant's restrictions does not necessarily demonstrate a sufficient attachment to the labor force. The fact that the claimant may obtain casual employment does not necessarily demonstrate a sincere desire to become fully re-employed. In other words, where a presumption of unavailability has been established, it is not **necessarily** rebutted by obtaining intermittent or part-time work.

If employment is obtained only after the claimant's restrictions have been relaxed, this in no way justifies removal of a disqualification for the period in which the restriction was in effect.

> Example: In 76A-1498 the claimant was employed in Alaska on a pipeline job from June 1 until October 7. He returned to his home in Portland, Oregon. The claimant originally stated that he was unwilling to accept non-union work, although he was not seeking work through any union in Oregon and expected to return to work through his Alaska union. On December 9, however, the claimant accepted work with a non-union construction company. The claimant was held ineligible from October 20 to December 4. The disqualification was lifted beginning with the week in which the claimant accepted non-union employment.

160.25 REFUSAL OR PRECLUSION OF WORK

A. General Discussion of Refusal or Preclusion of Work

A refusal or preclusion of a single offer of work, or even repeated offers, does not necessarily indicate unavailability. The suitability of the work, the claimant's reason for refusal or preclusion, and the remaining field of employment must be examined.

B. Suitable and Unsuitable Work

Although refusal or preclusion of suitable work raises an issue in that category, the issue of availability has to little do with the suitability of the work as such, but rather with the claimant's availability as shown by the reason for the refusal or preclusion of the possible employment.

C. Reason for Refusal

1. General

Where employment is refused with good cause, the claimant is available so long as some field of employment remains after ruling out the work affected by the claimant's reason for refusal.

Although a single refusal of suitable work without good cause does not necessarily indicate unwillingness to work, it can disclose a restriction that is disqualifying on other grounds.

> Example: In 76A-640 a claimant who had been unemployed for a considerable time refused shift work because it conflicted with his nighttime church activities. The claimant's reason for refusal was held to be non-compelling, and he was found unavailable because of the restriction he placed upon accepting shift work.

2. Repeated refusals

The inference that the claimant is not genuinely in the labor force becomes stronger if several offers of suitable employment are refused without good cause. If all the refusals are for the same cause, and that cause is compelling, or if the cause is not compelling and a substantial field of employment remains, there may be no availability issue, although it must be explored. If the claimant refuses several offers of work for a variety of reasons, there is the presumption that the claimant is not genuinely interested in reemployment

> Example: A claimant may refuse a particular job because of a personality conflict with an employee at the establishment. Although this reason would not, in most cases, supply a compelling reason to

refuse employment, the claimant would not necessarily be found unavailable, since the reason for refusal concerns only the particular job and does not extend to that type of work throughout the labor market.

Example: The same claimant refuses a second referral because it requires that the claimant possess a car as it is not on public transportation, and refuses a third referral because its wages are lower than those of the claimant's last job. Although any of these alone do not show unavailability, the combination tends to limit the claimant's job market to a point where it can no longer be termed substantial.

3. Reemployment offers

The claimant's prior history with the employer is generally irrelevant. Neither quitting nor having been discharged provides good cause to refuse an offer of suitable work from a former employer. If the refusals are without good cause, a claimant who imposes no further restrictions may still be found available if other acceptable employment exists in the labor market. However, the claimant is not available if the unacceptable employer is the only one in the claimant's labor market.

D. Preclusion of Work

As with outright refusal of work, preclusion of work raises an A&A issue if the claimant's reason for the preclusion is non-compelling, or if the reason is compelling, but no field of employment remains to the claimant.

Example: A claimant applied for work on December 1, but told the prospective employer that he had a vacation planned for December 15 through December 28. He would have given up his vacation plans if the job offered had been fulltime. The Tribunal found that he was available for work, as he was actively applying and would have foregone his vacation to accept a fulltime job. (97 2710, January 15, 1998)

160.3 REGISTRATION FOR WORK

Law: AS 23.20.378(a)

> *. . . An insured worker is not considered available for work unless registered for work in accordance with regulations adopted by the department. . .*

Regulation: 8 AAC 85.351

> *(b) A claimant who files for benefits in this state shall register for work and maintain an active placement registration in this state as required by AS 23.20 and this section. An active placement registration for work in this state means the claimant has registered with the labor exchange system operated by the division and has posted an online resume that is available for employers and division staff to match with available jobs. A claimant shall register for work*
>
> (1) in person at the employment service office of the division that is nearest the claimant's residence;
>
> (2) by telephone, if permitted by the director based on resource availability; or
>
> (3) by electronic means at the department's website.
>
> (c) The director shall find that a claimant is not available for work for any week ending before completion of a placement registration for work or for any week in which the claimant has not maintained a placement registration for work. To be considered available for work from the date of the initial claim, a claimant must complete a placement registration for work within seven days after filing the initial claim. If the placement registration for work is not completed within seven days, the claimant is considered available for work the week the placement registration is completed. To be considered available for work for any following week claimed within the benefit year, the claimant must maintain the placement registration for work.

A. General Discussion of Registration for Work

Under AS 23.20.378(a), a claimant is not available for work unless the claimant registers for work. The requirement to register for work is not simply a formality. The purpose of registration is to provide for prompt reemployment by exposing the claimant to potential employment.

> Example: A claimant had relocated to Michigan, but had not yet registered with the Michigan job services office. The Tribunal held that she was not available for work. (97 2618, January 6, 1998)

Registration for work demonstrates a claimants' attachment to the local labor market and a willingness to seek and accept work.

> Example: A claimant on leave without pay contended she was available for work although she had not sought work, registered for work, nor made any efforts to become reemployed. The Commissioner ruled to overcome the presumption of unavailability; she must register with job service and show an active attachment to the labor market. (96 1303, August 5, 1996)

Registration for work also includes creating a resume in AlaskaJobs (formally ALEXSYS as noted in the below example). A claimant is notified of their requirement to register for work at the time they file an initial claim.

> Example: A claimant did not take time to read the last page of her application for benefits. In denying benefits, the Tribunal held that the Division did discharge its "notice" obligation a second time when it mailed the subsequent ALEXSYS information to her current and correct address. (06 2472, January 19, 2007)

1. Interstate claimants

   Regulation: 8 AAC 85.351(a)

   > *A claimant who files a claim for benefits in a state that acts as an agent in taking claims for benefits held by this state shall register for work within seven days from the date the initial claim is filed and maintain the placement registration for work in accordance with the statutes, regulations, and procedures of the state in which the claim is filed.*

   A claimant who files a claim for unemployment insurance benefits against the state of Alaska in an agent state must register for work in accordance with the laws, regulations and procedures of that state. If a claimant properly registers, the claimant is eligible under this statute.

   > Example: A claimant who worked seasonally in Alaska, and lived in Washington State when not working, failed to register with Job Service. Finding the claimant unavailable, the Tribunal ruled he must be available for work in the area in which he is living, and he cannot be considered available for work unless registered for work locally as required. (04 0702, May 27, 2004).

2. Intrastate claimants

A claimant who files a claim against the state of Alaska from within the state must register for work and maintain an active placement registration.

A placement registration is one that allows the claimant to be in active status in the job matching system for the division and be referred to job orders placed by an employer with the division.

The claimant's initial registration for work must be completed within seven days from the filing of the initial claim. The registration is effective Sunday of the week in which the registration is completed. A claimant is not available for work for any week that ends prior to the effective date of the claimant's registration for work.

> Example: A claimant files an initial claim for benefits on Wednesday and is given 7 days to complete a placement registration. The claimant registers for work on Wednesday of the following week, the seventh day following filing of the claim. There is no denial of benefits as the claimant complied with the requirement to register within seven days. Had the claimant completed the registration on Thursday, the registration is effective the week in which it is completed and the prior week is denied

B. Types of registration

1. Full registration

Regulation: 8 AAC 85.351(e)

The director shall require a claimant to have and maintain a placement registration for work if the claimant is ready for work in at least one occupation. The director shall consider a claimant ready for work in an occupation if the claimant meets the skill qualifications for the occupation. If the director requires a claimant to have a placement registration, upon completion of the placement registration, the claimant will be placed in active status in the job matching system for the division and will be referable to job orders placed by employers with the division.

To be considered available for work, a claimant must be registered for work and available for work referrals. A work registration must be completed when filing a new, additional, or reopened claim; and an active work registration is required while filing continued claims. Registrations are deferred only if the claimant meets the specific conditions in 8 AAC 85.351(g).

While the responsibility for completing the work registration is placed upon the claimant, the division is responsible for determining which claimants

are required to register. The division will assign an appropriate registration code to each claimant at the time of the new, additional or reopened claim based upon the claimant's circumstance and the requirements of 8 AAC 85.351.

2. Deferred registration

Regulation: 8 AAC 85.351 (g)

The director may defer registration for work for a claimant who is:

(1) temporarily unemployed with a definite date to return to full time work within 45 days after the date the claimant files the initial claim;

(2) unemployed due to a labor dispute;

(3) traveling, immediately following the filing of the initial claim, for the purpose of relocating outside of this state; upon arrival in the new area of residence, the claimant shall register for work as required in (a) of this section;

(4) repealed

(5) normally hired through a trade union if the union furnishes information when requested by the director to verify the claimant's current membership and eligibility for dispatch;

(6) repealed

(7) repealed

(8) under an approved waiver of availability under AS 23.20.378 or 23.20.382.

Claimants may be deferred from placement registrations only if they meet one of the following conditions:

- temporarily unemployed with a definite date to return to full time work within 45 days after the date the claimant files the initial claim;
- unemployed due to a labor dispute;
- traveling, immediately following the filing of the initial claim, for the purpose of relocating outside of this state; upon arrival in the new area of residence, the claimant shall register for work as required in (a) of this section;
- normally hired through a trade union, if the trade union furnishes information when requested by the director to verify the claimant's current membership and eligibility for dispatch;

- under an approved waiver of availability under AS 23.20.378.

(a). Temporarily Unemployed

A claimant who is temporarily unemployed with a *definite* date to return to work may be given a deferred registration code. The return to work date must be 45 days or less from the date the claimant files the initial, additional, or re-opening claim.

Example: A claimant reports they will return to work April 10, 2017, pending weather. This shall be considered a definite return to work date since a specified date was given for when the employer anticipates work will begin. We will not penalize the claimant for something outside their control, such as weather, if they were given a specific date by an employer. This is not to be considered the same as a claimant reporting they will return to work in the spring, pending weather, since this does not include a definitive date.

(b). Unemployed due to a labor dispute

A claimant who is out of work due to a labor dispute will be given a deferred work registration. If, when the labor dispute ends, the claimant does not return to work, or if the claimant's unemployment is no longer due to the labor dispute, the claimant must register for work immediately.

(c). Traveling outside the local labor market

A claimant who is relocating at the time of, or immediately thereafter, filing the new, additional, or re-opening claim, will be given a deferred work registration. Upon arrival in their new location, the claimant shall register for work as required.

(d). Normally hired through a trade union

A claimant who normally obtains work through a trade union will be given a deferred work registration. The claimant must certify they are a current member in good standing and eligible for dispatch. The local chapter of the union must furnish information when requested by the Director, which shows that the claimant is a current member of the union and is eligible for dispatch in the area where the claimant is seeking work.

(e). Under a waiver of availability

A claimant who has been given a waiver of availability need not register for work. These claimants should be given a deferred registration code. At the point the waiver ends, the claimant must register for work.

Example: A claimant is attending school less than fulltime, and states that he/she is available for full time work. We must inquire about their registration status. Because the claimant is not under a waiver of availability, the claimant is required to be registered for full time work with their local Job Center.

Although a claimant's registration for work may originally be deferred, this does not mean that the claimant cannot later be required to register for work if the claimant’s circumstances change. A claimant whose registration has been deferred by the division is available for work insofar as registration is concerned.

160.35 VOLUNTARY LEAVING OR SUSPENSION OF WORK

Any voluntary leaving, and some misconduct dismissals, raises an issue of a claimant's availability. Examples of such reasons include health or physical condition, school attendance, personal affairs, and self-employment. The reason for leaving merely raises the availability issue; it cannot determine it. Regardless of the outcome of the separation determination, the claimant's availability is a different issue.

> Example: A pregnant claimant quits a job involving heavy lifting in her sixth month. She asserts that she is able to do lighter work, and has appropriate experience. She is available for work. She has a compelling reason for leaving the previous employment, but is available for work.

In some cases a claimant's voluntarily leaving employment may be considered as evidence of the claimant's lack of willingness to work or lack of attachment to the labor force.

> Example: A worker quit her job in Anchorage in order to prepare to relocate to New York. She had not shown efforts to find work in the Anchorage labor market. The Tribunal held that she was not available for work there. (98 0961, May 21, 1998)

160.4 WORK SEARCH ACTIVITIES

Regulation: 8 AAC 85.352(a)

A claimant who is required to register for work under AS 23.20 and 8 AAC 85.351 shall actively seek suitable work by performing at least one valid work search activity during each week that the claimant files for unemployment insurance benefits.

A. General Discussion of Work Search Activities

Claimants required to register for work in accordance with 8 AAC 85.351 and 8 AAC 85.352, shall not be paid benefits for any week of unemployment unless the claimant is actively searching for suitable work and has performed the required number of valid work search activities for each week filed.

A work search activity is valid if:

1. The number of employer contacts is consistent with the standards communicated to the claimant based on the claimant's labor market.

   Claimants residing within 55 road miles of an Alaska Job Center, and Interstate claimants will conduct at least two work search activities for every week they claim benefits. Claimants residing in all other areas will conduct at least one work search activity for every week benefits are claimed.

2. The claimant has not contacted the same employer(s) from prior weeks unless it's a follow up request by the employer or a limited labor market.

   Claimants residing further than 55 road miles from an Alaska Job Center are instructed to report at least one valid work search activity. Availability determinations for these claimants should be based on a broad spectrum of factors. Examine the typical employment patterns, the usual labor market for the claimant, whether it be in the town or village of residence or work outside of resident labor markets.

3. There is a demand for workers in an occupation suitable for the claimant within the claimant's labor market.

4. The search is appropriate to the claimant's skills and abilities under 8 AAC 85.410.

5. The claimant visits a job center for reemployment service or a career workshop, attends a job interview, or performs a similar high-engagement activity.

6. The claimant contacts an employer or a person with the authority to make hiring decisions directly by phone, email, or in person, who is likely to have job openings matching the claimant's qualifications. This also includes reviewing the employer's job postings or website and engaging in other explorative activities.

   The method of contact or inquiry must be appropriate based on how the prospective employer is usually contacted for work.

   Employers may only accept job applications through a third party process such as a job center sight, AlaskaJobs or other job listing servers like Monster.com, Indeed.com, etc. The work search activity is valid if it is the employer's preference. Claimants must also provide an employer name or job posting ID in order for the work search activity to be valid.

   AlaskaJobs work searches are valid if the claimant provides the employer's name, if listed, or the AlaskaJobs job post number. The job post number can only be seen if the post is actually opened to view and the number is found in the upper left corner. These can be verified by claim center staff under the "My Info Center" section of AlaskaJobs if there is a question about a reported work search. At the point the claimant views a job posting they are considered to have searched for work. Listing AlaskaJobs as the work search is not sufficient alone and must include at least one of the above specifics.

In accordance with 8 AAC 85.351, a claimant who is returning to full time work within 45 days of filing an initial claim; unemployed due to a labor dispute; traveling to relocate out of Alaska immediately after filing an initial claim; a union worker eligible for dispatch; or under a waiver of availability for approved training, medical, subsistence hunting or fishing, jury duty, or funeral attendance is not required to conduct work search activities.

For a discussion regarding availability and registration for work, see AA 160.3 REGISTRATION FOR WORK.

B. Reporting Work Search Contacts

Regulation: 8 AAC 85.352(d)

Using a method specified by the director to verify work search activities, a claimant who is required to perform a work search activity under 8 AAC 85.352 shall report to the division any employer contact or inquiry made during each week that the claimant files a claim for unemployment insurance benefits to the division. The report must include the following for each employer contact or inquiry:

1) the date the claimant made the contact or inquiry;

(2) the name of the employer or entity through which the activity was performed; and

(3) the telephone number, address, electronic mail address, or Internet address that the claimant used to make the contact or inquiry.

C. Work Search Efforts

A claimant's work search efforts tend to confirm the claimant's availability for work. A claimant's failure to make work search efforts, **after having been directed to do so**, tends to show unavailability. However, a claimant's failure either to make a specific work search contact or to make a specific work search in the absence of directions to do so cannot serve as the sole basis for the claimant's disqualification. The basis of the claimant's disqualification is the claimant's unavailability for work.

Example: A claimant's registration was deferred by the employment office in the area in which he was living. He made minimal efforts to find work independently, but was not directed by any office to search for work. The Commissioner held that "[L]ack of work search can[not] be used to disqualify a claim, if other facts don't support a disqualification and the claimant was not directed to make a work search." (96 2788, March 1998)

Example: A claimant was pursuing self-employment as a realtor, working out of a broker's office. He originally stated that he would not quit his self-employment in order to accept full-time work, but at the appeal hearing stated that he would accept full-time work if it paid at least $20 per hour. He had contacted three employers in the month of May. In denying benefits, the Tribunal held, "Availability for work is as much a state of mind as it is a state of actuality. (He) contends that he is available for and willing to accept work. But he is 'inclined' to accept work, and he 'became' available for work only after he learned that he would need to be so to receive benefits. While an active effort to locate work is not a requirement within the Alaska Employment Security Act, nonetheless, a person's efforts to locate work is strong evidence of the commitment one places on locating work. (He) has contacted only three employers in the entire month of May. (His) attitude during the hearing was that he was seeking and would be willing to accept work if it ensured that he got his unemployment benefits. He is making minimal efforts to locate work, and I do not believe that he is seriously in the labor market, but is preferring to pursue his real estate sales." (97 1125, May 30, 1997)

D. Review of Availability

Regulation: 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 is 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 as not available for work.

A claimstaker may review a claimant's availability for work any time during the claimant's benefit year by examining the claimant's prior experience and training, length of unemployment, work prospects, barriers to reemployment, and work search plan in relationship to the local labor market. Based upon that examination, the claimstaker may develop a plan to enhance the claimant's employability in the local labor market by:

- Assigning the claimant a new or additional occupational code in which the claimant has prior experience and training;
- Changing the claimant's registration for work;
- Referring the claimant to reemployment services; or
- Instructing the claimant to conduct an independent search for work.

160.45 PARTICIPATION IN REEMPLOYMENT SERVICES

Regulation: 8 AAC 85.357

(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) good cause under (b) of this section for failure to participate in the reemployment services.

A. General Discussion of Participation in Reemployment Services

Claimants are required to participate in reemployment services to which they have been referred as a condition of their eligibility for unemployment insurance benefits.

Reemployment services offered by the Division include orientation, job search assistance and job placement services, such as counseling, testing, and assessment, providing occupational and labor market information, job search workshops, job clubs, and referrals to employers.

A claimant who does not complete the orientation or participate in any scheduled reemployment services raises the immediate presumption of unavailability for work, since the claimant did not participate in services to facilitate the claimant's reemployment.

B. Did the Claimant Have Good Cause for Failure to Participate in the Reemployment Services?

Regulation: 8 AAC 85.357(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 justifiable 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.

A claimant has good cause for failure to participate in reemployment services or related services 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.

1. Good cause for Non-Participation

A claimant has good cause for non-participation in scheduled reemployment services in a given week if it can be shown that a reasonable person in the same circumstances who sincerely wanted to become reemployed would similarly not participate in the scheduled reemployment services **AND** the claimant took the actions that a reasonable and prudent person would take in order to participate.

Good cause includes, but is not limited to: the illness or disability of the claimant or a member of their immediate family; claimant's presence at a job interview scheduled with an employer; or severe weather conditions precluding safe travel. In all such cases, the claimant's ability to work or availability for work is in question.

A claimant has good cause for failure to participate in reemployment services if:

a. There are circumstances beyond the claimant's control

Circumstances are "beyond the claimant's control" when they compel the claimant not to participate and the claimant is unable to rectify the interfering circumstances.

Example: The claimant did not have transportation for a week, causing her to miss a reemployment services interview. The Tribunal held that she had good cause for failure to participate in the reemployment services. However,

her lack of transportation made her unavailable for the week in question. (97 1735, September 16, 1997)

Example: A claimant did not attend the mandatory meeting because he was spending time with his girlfriend and because he was unhappy with the fact that he had been given a new case manager. In denying benefits, the Tribunal held that neither reason provided circumstances beyond his control that prevented him from attending the meeting. (97 1373, June 27, 1997)

Example: The claimant did not attend an appointment with reemployment services because she was distraught over the sudden illness and death of her significant other. The Tribunal held that the circumstance provided her with good cause for overlooking the notice of the appointment. (99 1879, August 12, 1999)

Example: The claimant did not attend the in-person reemployment services orientation meeting because of heavy, blowing snow and travel advisories not to leave home if unnecessary. In allowing benefits, the Tribunal held the travel advisories supports the conclusion she had good cause to miss the meeting. (02 2467, December 5, 2002)

Non-Receipt of Mail or Information

Non-receipt or possible non-receipt of information or mail can give good cause for failure to participate in scheduled reemployment services. Making arrangements to receive mail timely is a responsibility of the claimant to be work ready. As referenced in the Evidence Section of the Benefits Policy Manual, under the presumption of “normal operation of mails”, it can be assumed that a letter, job offer, or call-in duly mailed was received by the claimant. This presumption can be rebutted only by evidence that establishes that the normal order of events has been displaced. For a discussion regarding “normal operation of mails”, see EV (Evidence) 15-1.

Example: The claimant did not attend her orientation meeting because she never received the letter advising her of the meeting. Her roommate picked up the mail and never gave it to her. The Tribunal upheld the denial of benefits stating that the letter was sent to her correct address of record. She became responsible for the mail as soon as it was delivered to her or her agent. Her roommate was her agent, in this case. (03 0355, March 10, 2003).

Example: The claimant went to North Pole from his Fairbanks residence to house sit for his parents for eight or nine days. He did not check his mail at his Fairbanks home until his parents returned. He chose to be away from his home for non-work related reasons. The Tribunal held the circumstances were not beyond his control as he had an obligation to ensure he checked his mail on a regular basis. (02 1117, June 3, 2002)

b. Circumstances exempt the claimant from the availability for work requirements

A claimant has good cause for failure to participate in reemployment services or similar services if the claimant's circumstances exempt the claimant from the availability for work requirements in AS 23.20.378 because:

- The claimant is ill or disabled;
- The claimant travels to obtain medical services not available in the claimant's locality, for the claimant, a spouse or a dependent;
- The claimant is hunting or fishing for survival; or
- The claimant is serving as a prospective or impaneled juror in a court.
- The claimant is attending the funeral of an immediate family member for a period of no longer than seven days.

For a discussion regarding the statutory exemption for a claimant who is ill or disabled, see AA 235.05 HEALTH OR PHYSICAL CONDITION, Waiver of Availability.

For a discussion regarding the statutory exemption for a claimant who travels to obtain medical services not available in the claimant's locality, or accompanies a spouse or dependent who travels to obtain medical services, see AA 150.1 TRAVEL, While under a Waiver of Availability.

For a discussion regarding the statutory exemption for a claimant who serves as a prospective or impaneled juror in a court, see AA 370 PUBLIC SERVICE, Jury Duty and Service as a Witness.

c. The claimant is in approved vocational training

A claimant has good cause for failure to participate in reemployment services if the claimant attends approved vocational training under AS 23.20.382 and 8 AAC 85.200. For a discussion

regarding a claimant who attends approved training under the statute and regulation, see AA 40.2 APPROVED VOCATIONAL TRAINING PROGRAM.

d. An incorrect referral to services

A claimant has good cause for failure to participate in reemployment services if the claimant's referral to reemployment services was incorrect. The incorrect referral of a claimant to reemployment services is usually the result of an error in the claimant's work registration requirement or the result of a change in the claimant's circumstances which exempt them from the requirement to participate.

Claimants are incorrectly referred to reemployment services if

- They are temporarily unemployed with a definite date to return to fulltime work within 45 days after the date they filed the initial claim; or
- They are unemployed due to a labor dispute; or
- They are traveling immediately following the filing of the initial claim for the purpose of relocating outside of Alaska; or
- They are normally hired for work through a trade union; or
- They are under an approved waiver of availability under AS 23.20.378 or AS 23.20.382

A change in claimant circumstances prior to the scheduled service may result in a change to the participation requirement

Claimants may be excused from participation in reemployment services due to a change in their circumstances that would no longer require their participation. For example, if the claimant becomes fully employed, relocates outside the service area for reemployment services, or attends training approved under state statute and regulation, participation in reemployment services may no longer be required.

Employment during the week of the missed service may establish good cause for non-participation in reemployment services. Consideration must be given to the claimant's work schedule during the week of the missed service and the number of hours the claimant was employed during that week. The requirement for

continued participation in reemployment services will depend upon the claimant's assurance of continued or increased employment.

Example: The claimant was denied benefits when she missed her orientation appointment because she started a full-time job. The Tribunal overturned and allowed benefits stating, "The purpose of the reemployment services program is the employment of claimants." (02 2266, November 21, 2002)

2. Good cause and eligibility requirements

A claimant who participates in reemployment services must also meet the able to work and available for work requirements in AS 23.20.378 and 8 AAC 85.350 to receive unemployment insurance benefits. Good cause for not participating in reemployment services does not supersede these requirements.

Example: A claimant failed to participate in reemployment services because the claimant traveled to Hawaii for a vacation. An adjudicator found that the claimant received an incorrect referral to reemployment services. Therefore, the claimant had good cause not to participate in reemployment services while traveling. However, the claimant did not travel for the purposes under AS 23.20.378 and 8 AAC 85.353(b). Therefore, the claimant would be disqualified from receiving unemployment insurance benefits because of the travel.

C. Take the Actions That a Reasonable and Prudent Person Would Take in Order to Participate

It is expected a claimant will take the action(s) that a reasonable and prudent person would take prior to concluding that participation in the scheduled reemployment service is not possible. Consideration is given to what the claimant did to try to overcome any obstacles to their participation.

For example, although a reasonable person would not be expected to leave children at home unattended, a reasonable person would be expected to make some effort to obtain childcare in order to participate in reemployment services.

For example, a reasonable person would be expected to make some effort to obtain timely assistance or technical help from appropriate Division staff to successfully complete a scheduled service.

165 EMPLOYER REQUIREMENTS

A claimant may be barred from working with certain employers because of employer requirements that the claimant is unwilling or unable to meet. For example an employer may require that the applicant must be a college graduate, must be bondable, or the like. It is important to determine first whether all employers in the labor market have the same restriction or whether the requirement is specific to a single employer. If the requirement is unique to a single employer, the claimant's availability in the labor market may not be diminished to any degree. However, if the requirement is a general one or if a single employer controls a large share of the labor market, the claimant may be unavailable depending on the nature of the requirement and whether the claimant is unable to meet requirement or simply unwilling to do so.

> Example: In the case of Trudy Migneault, (1JU-95-1663 CI, Trudy Migneault v. State of Alaska, Sup. Ct., 8/26/96), Ms. Migneault, a Canadian citizen, moved with her husband to Quebec. All employers in the area required that she speak French, but Ms. Migneault spoke only English. Although Ms. Migneault was willing to accept suitable work, there was no work available for her with her language limitation. The Court held that she was unavailable for work as there was no substantial field of employment.

A claimant who is **unable** to meet a customary requirement in the occupation is nevertheless available if the claimant imposes no further restrictions and there remains a market for some work the claimant is qualified and willing to perform. A claimant who is unable to meet the customary requirements in the occupation and who will not consider other work is ineligible. At any rate, the claimant must make a bona fide effort to comply with reasonable and customary employer requirements.

A claimant will not be disqualified for failure to meet an employer requirement that is **unreasonable or illegal,** even if it is possible for the claimant to comply with the requirement.

> Example: AS 23.10.037 prohibits any employer from requiring or suggesting that an applicant, other than a prospective police officer, submit to a lie detector test. A claimant will not be found unavailable merely because of a refusal to comply with such a requirement.

A requirement that is customary throughout an occupation is almost always reasonable. Other reasonable requirements are those that concern health or safety of employees or the public, or would cause the employer some actual or potential loss or disadvantage if they were not met. However, a requirement not connected with the employment, or with the employer's interest, is usually considered unreasonable. The refusal of an employer to hire a worker because of marital status, race, or religion constitutes unreasonable discrimination and does not render the worker unavailable.

180 EQUIPMENT

Workers in certain skilled occupations, such as mechanics and carpenters, customarily own the hand tools that they use in performing their work. It is the responsibility of the individual worker engaged in these skills to have a full set of the tools of the trade ready for immediate use during periods of unemployment. In some occupations special clothing or dress accessories customarily are furnished by workers. When a worker does not possess the necessary customary equipment for the worker's occupation and is unable or unwilling to purchase it, the worker is unavailable for work unless qualified for and willing to accept other work existing in the area.

195 EXPERIENCE OR TRAINING

Law: AS 23.20.385(b)

> *In determining whether work is suitable for a claimant and in determining the existence of good cause for leaving or refusing work, the department shall, in addition to determining the existence of any of the conditions specified in (a) of this section, consider the degree of risk to the claimant's health, safety, and morals, the claimant's physical fitness for the work, the claimant's prior training, experience, and earnings, the length of the claimant's unemployment, the prospects for obtaining work at the claimant's highest skill, the distance of the available work from the claimant's residence, the prospects for obtaining local work, and other factors that influence a reasonably prudent person in the claimant's circumstances.*

Regulation: 8 AAC 85.410(a)

> *The director will determine that work is suitable for a claimant if the work is in the claimant's customary occupation or is work for which the claimant has training and experience.*

A claimant's most recent work is not necessarily the claimant's customary occupation. Consider all recent occupational experience and training before determining the claimant's customary occupation. A claimant may understandably desire to be available only for work in the occupation that offers the higher wage or more pleasant working conditions. However, where a claimant's most recent occupation was seasonal, intermittent, or short-term, the claimant cannot long restrict availability to that occupation, especially where the claimant's experience and training adequately qualify the claimant for another occupation for which there is greater demand in the labor market.

The same principle also applies where the claimant's last occupation was at a lower skill level or lower pay than the claimant's customary occupation. In such cases, an adjudicator would not require a claimant to consider the claimant's last work as the claimant's customary occupation.

Sometimes the field of employment for a claimant's services may be limited or nonexistent for reasons which are beyond the claimant's control. A claimant is available for work if:

- there is work in the labor market which the claimant is willing to take which requires little or no prior training or experience, or
- there is work in another occupation in which the claimant has prior experience or training.

A claimant whose prior experience and training can easily apply to other occupations cannot choose to be restricted to only the claimant's customary occupation, except for a short time. As a claimant's length of unemployment increases and work prospects fail to appear, a claimant is required to accept other suitable work. Conversely, a claimant whose customary occupation is no longer available in the local labor market is not necessarily unavailable for work if the claimant's skills are readily transferable to other work in the labor market that is in demand. For a discussion regarding training and experience and the suitability of work, *see* SW 195.05, "Experience or Training."

215 GOVERNMENT REQUIREMENTS

The majority of government requirements pertain to citizenship (see AA 70 CITIZENSHIP OR RESIDENCE REQUIREMENTS), licenses, permits, or security clearances.

Employment that has a government requirement that the claimant is **unable** to meet is unsuitable work. However, if this requirement extends throughout the occupation, and the claimant will not accept other work, the claimant is not available for work. In all cases, the claimant must make a good faith effort to comply with the requirement.

If the claimant does not possess a government license or permit that is customarily required in the occupation, it is the claimant's burden to show that the lack of the permit does not unduly restrict availability in the claimant's normal occupation, or that the claimant is willing to accept other work for which a permit is not required.

> Example: In 77H-106, the claimant was seeking work as a registered nurse, although she had not yet passed the necessary state tests required for certification as a registered nurse. She contended that some hospitals in the labor market were willing to hire nurses pending such licensure. She had not found a hospital that would hire her under those terms, nor had she obtained a waiver from the state. The claimant did not seek work in any other occupation, although her training and experience qualified her for other employment. The claimant was held unavailable until such time as she either passed the required examinations or expanded her work search to include other types of employment.

235 HEALTH OR PHYSICAL CONDITION

235.05 GENERAL

Regulation: 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.*

A. Receipt of Disability Payment

For a discussion of the effect of the receipt of disability payments, see AA 375.1 DISABILITY COMPENSATION.

B. Burden of Proof

The health and consequent physical ability of a claimant to work is taken for granted with two exceptions. The burden of proving ability to work is on:

- a claimant who left former employment due to health or other physical inability to work at the job;
- a claimant who has, since the last employment, become unable to work.

C. Statement of Physician

1. Date of statement

If a physician's statement is requested, the date that the statement shows the claimant able to work is the date to use in determining availability, not the date that the statement is received (although there may be a reporting issue if the claimant does not return the statement as required. (98 1983, September 28, 1998)

2. Standards for requesting

A physician's statement is not necessary in all cases. Because procuring one can be for some claimants difficult and costly, it is important to use judgment in requesting it.

A physician's statement should be requested when:

- the claimant is limiting availability because of a disability, or
- the claimant has been previously disqualified on the basis of a disability and now claims ability to work, or

- the claimant left the last employment because of an illness or disability.

A physician's statement is not necessary when:

- the claimant had a short-term illness but is now recovered, or
- the claimant has made a valid search for work following an illness or injury, or
- although the claimant has a disability, no physician has ever said the claimant was unable to work.

  Example: A claimant took time off from work to recover from an illness. When he called the employer to return to work, the employer had no work for him. The Tribunal held that Mr. Hambrick's calling the employer to offer to return to work provided such proof of his ability to work that a physician's statement was unnecessary. (97 1271, June 13, 1997)

3. Claimant states inability to work

If the claimant is not able to accept fulltime work and says so, and is not eligible for a waiver of ability to work, a physician's statement is not necessary.

Example: A claimant had quit her former job because of the heavy lifting involved as a care attendant. She stated for the same reason that she was only interested in part-time work as she did not think that she could work full-time in her occupation as nurse's aide. However, the Worker's Compensation physician had released her for full-time work. She did not provide an additional medical statement showing her current limitations, and, because of this, the Tribunal held her unable to work. (97 1513, July 30, 1997)

Example: A claimant injured his wrists on the job and had to leave his employment. His doctor released him as able to do light work. The employer had no work for him, and he went to physical therapy because his wrists were still bothering him. He was released for work with no restrictions, but his wrists were still bothering him, so he went to another doctor who sent him to therapy and released him for work that did not require fine-motor work or twisting his wrists. The claimant then saw another doctor who released him for work without restrictions, but there was no work available. The Division of Vocational Rehabilitation has surgery scheduled for him, and then will send him to school or to work. The Tribunal held that, although at various times doctors had released the claimant to work, his continued difficulty with his wrists showed that he was at no time able to work. (99 0713, May 3, 1999)

If the claimant is in compensable claim status at the time of the inability, the physician's statement may be necessary if:

- the illness or disability is not obviously self-limiting, as, for example, a case of flu, or
- at the end of the waiver provision, or
- when the claimant otherwise states an ability to return to work.

4. Claimant states ability to work; physician disagrees

Although a physician's appraisal of a claimant's health and physical capabilities is to be accorded substantial weight, it is not necessarily conclusive of the claimant's actual ability to work.

> Example: A claimant had diabetes and was advised by his physician to seek sedentary work. However, he continued to work in his occupation as a cook for three years, until he was laid off by his employer. The Tribunal held that his consistent pattern of work outweighed the physician's statement and held him fully available for work. (97 2089, October 8, 1997)

If the claimant and the physician disagree about the claimant's ability to work, the claimant's work history must substantiate the claimant's contention of ability to work. This is especially true where the claimant has a substantial on-going disability acquired or intensified since the last employment. In these cases the claimant must show a substantive attachment to an actual labor force.

> Example: A secretary resigned from his last job and applied for disability retirement. His physician diagnosed him with lumbar disc disease, and restricted him from his usual occupation, plus other work that required bending, twisting, or heavy lifting. The claimant disagreed with the physician's diagnosis and stated that he was fully able to work approximately a month after his retirement, when he stopped taking his pain medication. At the time of the hearing, although he had checked the jobs board at the employment office, the claimant had not contacted any employers. In denying benefits, the Commissioner held that the claimant was neither able to work nor available for work. He was not able because his physician's statement was substantiated by his application for a disability retirement. He was not available for work because he showed no willingness to work, by the fact that he had not applied for any jobs. (95 0989, June 30, 1995)

5. Claimant states ability to work; physician agrees

Even where the physician's statement agrees with the claimant in asserting the claimant's ability to work, the statement is not sufficient to determine a claimant's eligibility in all cases. For example, a claimant's physician might state that a claimant can do "light work" or "sedentary work." It must then be determined what kind of light or sedentary work the claimant is qualified to do by experience or training, whether there is a sufficient field of employment for such work, and whether the claimant will accept that work under the prevailing conditions.

D. Is the Claimant Able to Work?

1. Ability to work

If the claimant was unable to work during the customary work-week, the claimant is considered unable to work for the week. A claimant must be able to work at least 5 days of the customary workweek.

Ability to work does not include claimants' appearance, including any visible handicap, or any other characteristic that might prejudice employers against hiring them. However, ability to work does include the fact that claimants be capable of working in their field of employment without endangering the lives and well-being of themselves, their fellow workers, the public, or the employer.

2. Available field of employment

Claimants who are physically unable to work in their usual occupation cannot simply be found unavailable for work. They may still be considered available for work if they are able to do some gainful work for which they are qualified by training and experience. As long as the claimant can do some work and do it under the prevailing conditions, the claimant is able to work.

Since a restriction based upon a physical condition is always compelling, the claimant's availability would depend on whether a field of employment existed for the claimant's services.

> Example: In 76B-452, a claimant who was receiving a disability pension from the Civil Service was attempting to become re-employed through a state vocational rehabilitation office. She was unable to work in her customary occupation and enrolled in a clerical course that would train her to do office work. Her disability prevented her from typing and using office calculating machines. She was advised by her doctor to drop the training, and was further restricted to only part-time work. Because the claimant's disability prevented her from working in her normal occupation, and because

she was unable to accept other full-time work, she was held not able to work.

Example: Because of a disability, a claimant restricted himself to work that did not involve heavy lifting. He had the training and experience to do such work and it was available in his labor market. He was held to be available for work. (97 2169, October 28, 1997)

Example: A claimant was limited by her physician to 30 hours of work per week. She believed that she could work a forty-hour week if she was on a flex schedule that allowed her to space her work so that she worked seven days per week, five or six hours per day. Because there was no work in the labor market that met those criteria, the Tribunal held that she was unavailable for work. (98 0329, March 13, 1998)

E. Waiver of Availability

Law: AS 23.20.378

(a) An insured worker may not be disqualified . . . if

(1) the insured worker is not available for work because the insured worker

(A) is ill or disabled;

(2) a condition described in (1) (A)-(C) 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 him 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.

1. General

AS 23.20.378 is a limited exemption from availability for claimants who are unavailable for work because of an illness or disability and have filed a compensable claim immediately preceding such unavailability due to illness or disability. The purpose of the provision is to extend the eligibility of claimants whose disability is not the immediate cause of their unemployment. The waiver applies for not more than six weeks, or until the claimant is required to refuse suitable work because of the illness or

disability, at which point the unemployment becomes due to such illness or disability. Note that the illness or disability applies only to the claimant and not to a dependent of the claimant (98 1483, July 30, 1998.)

8 AAC 85.354 specifically provides that a physician's statement may be required periodically during a period in which a claimant is drawing benefits under the illness provision, in order to verify the illness or disability. The report must specify at least the nature of the illness or disability, the date it was incurred, and its expected duration.

2. Definition of illness or disability

Any condition that makes the claimant unable to work qualifies as an illness or disability under the provision. A medical condition, of itself, does not necessarily require a finding that the claimant is unable to work, and **the illness provision does not apply until the claimant is actually unable to work.**

> Example: Pregnancy is not an illness or disability. It becomes an illness or disability only at the point the claimant is no longer able to work due to her pregnancy.

Emotional disabilities qualify as illnesses or disabilities whenever they make the claimant unable to work.

> Example: In 79H-215, the claimant was in compensable claim status when notified that her mother was in a coma and dying. Competent medical evidence from a physician established that the claimant was under such extreme emotional stress following her mother's death as to render her disabled. The Commissioner held that as the claimant was unemployed and in compensable claim status prior to becoming disabled, she was eligible under the illness provision.

3. Was the claimant in compensable claim status?

To be eligible for the waiver, the claimant must have been in compensable claim status at the point of unavailability due to the illness or disability. For a definition of compensable claim status, see AA 5 GENERAL.

> Example: A claimant traveled from Anaktuvuk to Fairbanks for medical care not available in his village. However, he had been disqualified the week preceding his travel for personal travel, and the Tribunal therefore found him ineligible for a waiver of availability due to the illness. (99 0642, April 9, 1999)

Example: A claimant dislocated a tendon in his left ankle while employed. However, he continued to work through the next day, when he was laid off due to lack of work. A few days later the claimant saw a doctor, who said that the claimant was able to work. The claimant continued to make union calls each week until a different physician advised him not to work. The Tribunal held that the claimant, acting on the advice of his first physician, was ready and able to work until he was finally advised not to do so several months later. Since the claimant had filed a compensable claim immediately before he was advised not to work, he qualified under the illness provision. (80B-1513, January 5, 1981)

4. Did the claimant miss available work or refuse new work because of the illness or disability?

   If the claimant missed available work or refused new work because of the illness or disability, the claimant is not eligible for the waiver.

   Example: A claimant had a heart attack on January 31. He was in compensable claims status, as he worked on-call and had not worked full-time the week before. On February 6, his employer had work available for him that he could not accept because of his illness. The Commissioner upheld the Tribunal in finding that the comp status ended at the point where he was offered work. (9322397, August 24, 1993)

5. Had the claimant been ill or disabled for more than six consecutive weeks?

   A claimant's eligibility under the illness provision is limited to six consecutive weeks per illness or disability, beginning with the week the claimant first establishes eligibility. Failure to file a claim or claims during the six-week period does not terminate the eligibility, but the eligibility lapses after six consecutive calendar weeks.

   Example: For seven weeks a claimant was unable to work due to a cataract operation. He was in compensable claims status and refused no offers of work. He was given the waiver of ability for the first six weeks and denied the seventh week. (97 1535, July 23, 1997)

6. Beginning date of comp status

   Compensable claim status begins at the point of unavailability. It may be necessary to examine the claimant’s customary workweek to determine when the illness/disability made the claimant unavailable for work. The point of unavailability may not begin until the next week, provided the

claimant was able to work during their customary workweek and the week in question was a payable week.

7. Inclusiveness of waiver

Note that a claimant who is filing benefits under a waiver of availability may do things that would otherwise result in a denial of benefits for lack of availability --- such as travel other than for allowable reasons. The claimant's availability is waived, and only refusal of suitable work can make the claimant ineligible to receive benefits.

235.25 ILLNESS OR INJURY

A. General Discussion of Illness or Injury

An individual's ability to work may be restricted by injury or illness resulting in a temporary disability. However, the existence of a health condition does not in itself make the claimant unable to work.

Points to consider are:

1. Has the claimant established good cause for the restriction?

2. Is there work the claimant can perform given their restriction and their qualifications, either training or experience?

3. If the claimant is unable to work, are they eligible for a waiver of availability under AS 23.20.378?

> Example: A customer service manager left her former job, which required prolonged standing, and was advised by her physician to do only sedentary work. Since there was work that she could do with that limitation, she was held to be available for work. (97 2694, January 16, 1998)

B. Illness

1. Short-term illness

A claimant with a minor illness may not be prevented from working. No disqualification will be imposed if the claimant could have worked despite the illness.

If a claimant is *unable* to work during their customary workweek, the claimant is ineligible for the week unless the claimant qualifies for a waiver of availability. See AA 235.05, E. Waiver of Availability. See the UIPM.

A claimant with a minor illness, such as the flu, or a cold, who declares recovery, is not required to produce a physician's statement to show ability to work.

2. Contagious diseases

Availability of a claimant with a contagious disease must be considered somewhat differently from that of claimants with other ailments. Often the claimant is able to work despite the ailment, but to do so may endanger

the health of fellow workers or the public. In these circumstances, the claimant is unavailable.

If the claimant is under quarantine, the claimant is automatically unavailable.

The specific ailment must be considered in relation to the claimant's occupation.

> Example: A mildly infectious skin ailment may make a claimant unavailable in the food service or processing occupations, but not in the occupations with minimal public or food-handling contact.

C. Injury

A claimant whose injury prevents the claimant from working in their usual occupation is ineligible unless there is work which the claimant is willing and able to perform and for which they are qualified by training and experience.

> In Commissioner Review 164, a claimant injured his left arm, and was unable to carry heavy objects. His physician released him for light duty work. The claimant was qualified by both training and experience as an accountant. The Commissioner held the claimant able and available, stating the claimant's "physical disability, although lessening his employment opportunities, does not negate his ability to work. Work must exist in the labor market and the claimant must be capable of performing such work in order to be considered able."

Ideally, there is some type of work that any claimant with a temporary, partial disability can perform, however this may not be sufficient to establish a labor market for a claimant who has no training or experience.

> Example: A restaurant worker broke his ankle and was unable to work. He had no skills that would allow him to do sedentary work, although he was willing to perform any that was available. The Tribunal held that he was unable to work until he could work at his usual occupation. (99 0593, April 9, 1999)

> Example: A construction worker without training or experience in other work suffers a broken leg. The worker contends he is able to do office work such as answering the telephone. However, the lack of training or experience in this type of work, make the chance of employment so remote the claimant cannot be considered available for work.

D. Medical or Dental Visits

Medical or dental appointments usually do not impair a claimant's availability. These appointments can usually be deferred if needed, and they are the sort of day-to-day affairs that people handle while employed. However, if the visit involves treatment that requires a recuperative period, and the claimant is unable to work during such period, the availability of the claimant must be examined for the entire week. A waiver of eligibility under the illness provision should also be considered.

As with personal affairs, a claimant attending medical appointments during the workweek is available for work if:

- The claimant is able and willing to promptly respond to an offer of suitable full time work; and
- The claimant is physically present and otherwise available for work in the local labor market during the customary workweek.

E. Hospitalization

A claimant who has been admitted to the hospital is almost always considered unavailable for work, since the claimant is unable to respond to an offer of employment.

F. Alcoholism or drug addiction

Alcoholism or drug addiction for which a claimant is receiving treatment are considered as illnesses under the provisions of this statute. However, a claimant who is unavailable for work due to drinking bouts or drug usage, but not receiving treatment for these is unavailable for work.

G. Mental illness

The considerations that apply to any other illness apply to mental illnesses and emotional disturbances as well. When a physician states that a claimant can work, but "should avoid stress," or similar statements, it is important to document the types of work the claimant can do.

> Example: A substitute teacher refused an assignment because she was distraught due to the death of her mother. The Tribunal held that her condition was an illness, but, because she had refused an offer of work, she was not eligible for the waiver of availability. (98 1040, May 27, 1998)

235.4 PREGNANCY

A. General Discussion of Pregnancy

A claimant is not presumed unable to work simply because she is pregnant. Therefore, we do not need to investigate the ability to work of a pregnant claimant unless the claimant herself states that she is unable to do some or any work, or unless other evidence creates a presumption of unavailability.

There is a presumption that a pregnant claimant is available for work unless she quit her previous employment because of pregnancy; she indicates unavailability or unwillingness to work; her occupation requires extreme physical exertion; or the complications of her pregnancy render her unable to do any work at all. Presumptions of this sort are not conclusive, however, and may be overcome by evidence that the claimant is willing to work, and that her condition does not render her unable to work.

> Example: A claimant quit her job for medical reasons connected to her pregnancy. She checked for work at the employment service office and answered a blind box ad. She expressed severe restrictions on the work she would accept at the time she filed her claim. For these reasons, the Commissioner held that she was unavailable for work, because, although she claimed that she was able to work shortly after resigning, she had not requested a short-term leave, nor had she demonstrated a willingness to work either by registering for the type of work that she could do or by seeking that type of work on her own. (95 2219, October 31, 1995)

Employers are often reluctant to hire pregnant applicants. This fact does not justify holding the claimant unavailable. The question is whether an adequate amount of employment exists in the labor market that the claimant is qualified, willing, and able to perform. A determination on this point is not to be based on the hiring practice of particular employers that may unlawfully discriminate against pregnant applicants.

B. Evidence

A physician's statement is, in most cases, conclusive as to the claimant's health. It is not necessarily conclusive as to the claimant's ability to work under the statute. Although a physician's statement is to be given great weight, it should be requested and used with appropriate caution.

In the first place, a physician's statement should be requested only when a definite question of a claimant's ability to work arises which can be resolved by expert medical opinion as to the claimant's condition.

> Example: A claimant may be noticeably pregnant at the time she files her initial claim. The subsequent interview shows that the claimant is ready

and willing to work, is not disabled, and is qualified for work in a sedentary occupation easily performed by someone in her condition. Unless other evidence raises a question of the claimant's ability to work, no physician's statement should be requested at that point.

Once a physician's statement has been received, a further consideration is the degree to which the physician's statement is specific. A medical report represents the physician's opinion as to the claimant's physical condition and ability to work. Nevertheless, it is the adjudicator's responsibility to determine whether the claimant is able to work.

Example: The physician states that the claimant is unable to work for a specific period. The claimant shows, however, that she has worked before at the same stage in previous pregnancies. In the absence of evidence of complications peculiar to the current pregnancy, the claimant's past work history should be given greater weight than the physician's statement.

Example: On the other hand, the physician may state that the claimant is able to work or is able to do "light" or "sedentary" work. However, if the claimant was separated from just such light work on account of her pregnancy, little weight can be attached to the physician's statement. Often, there is no lighter work available than that which the claimant performed on her last job.

Another consideration is the fact that the claimant's physical status will change during her pregnancy. For example, nausea and dizziness associated with the early stages of pregnancy may disappear in later stages. A physician's certificate that is the result of a physical examination early in the claimant's pregnancy will carry less weight as the pregnancy progresses.

C. Ability to Work

1. General

The claimant is able to work if there is some occupation in the labor market that she is qualified and able to do. The claimant's eligibility depends on whether the claimant's training, experience, and physical abilities can be matched to an identifiable occupation in the labor market.

Example: A claimant leaves work in the last trimester of her pregnancy because she can no longer do the heavy lifting required in her last occupation. She is qualified in various sedentary clerical occupations that exist in the labor market; she has been advised by her physician that she can do this work; is registered in those occupations; and imposes no further restrictions on her availability. The claimant in this case may be found able and available.

A claimant whose pregnancy prevents her from working in her regular occupation is not eligible based simply on her statement that she will take "anything" or "light work."

2. Additional restrictions on availability

In cases where the claimant's field of employment is limited on account of her pregnancy, she may be found unavailable if she imposes any further non-compelling restrictions. In addition, such restrictions indicate in many cases an unwillingness to work. A claimant may be able to work despite her pregnancy but may be unwilling to do so for a variety of reasons.

On the other hand, where further compelling restrictions are raised and a field of employment remains the claimant may be found eligible.

3. For what period of time is the claimant unavailable?

A pregnant claimant will be found unable to work only at the point her pregnancy, or a condition caused by or attendant to her pregnancy, makes her unable to perform work in her normal occupation, or other occupations for which she is qualified. The claimant's physical condition must always be considered in relation to her field of employment, and her ability to work, except in extreme cases such as prescribed bed rest or hospitalization, depends on the physical requirements of her occupation.

In addition, the effect of pregnancy on a woman's physical condition may change during the course of the pregnancy.

Therefore, there is no general rule regarding the time in which a pregnant claimant is able to work prior to childbirth, but each case must be considered on the facts. Some claimants may be unavailable when only one month pregnant, while others may be able to perform work up to the date of delivery. However, as a general rule, the claimant is considered unable to work at least during the week of delivery.

D. Eligibility Following Childbirth

A claimant may be able to work almost immediately following the end of her pregnancy, unless complications prevent work for a longer period of recuperation. In such cases, a physician's statement of the extent of disability is important.

Example: The physician of a claimant gave her a return-to-work date following her delivery of July 21. She was not willing to accept part-time work with her former employer prior to that date. Based on that, the Tribunal held her unavailable for work. (97 1651, August 7, 1997)

Where the actual issue is availability, *see* VL 155.1 Care of Family Member.

E. Illness Waiver

A claimant who is found unable to work as a result of pregnancy or complications of childbirth is potentially eligible for the waiver of availability of AS 23.20.378(A)(1). See AA 235.05 GENERAL.

On the other hand, a claimant who **chooses** to remain at home during or after pregnancy to be with her children is not eligible for the waiver.

250 INCARCERATION OR OTHER LEGAL DETENTION

A. General Discussion of Incarceration

A claimant who is or was incarcerated may not be available for work upon the claimant's release, but at that point the question of availability revolves around the claimant's willingness and ability to be available in the labor market. Whether there are current openings for the work that the claimant is seeking or whether employers are reluctant to hire the claimant are immaterial.

Incarceration during the normal work-week in the claimant's occupation will result in a finding of unavailability, even if the claimant is later found innocent and misses no work during the incarceration. This is so, because the claimant is unable to respond and report to an offer of work and therefore not accessible to the labor market. The fact that no offers of work are made is immaterial.

> Example: In A-4612, the claimant was arrested and incarcerated, but all charges were later dismissed by the court. The claimant worked in the logging industry, and at the time of his incarceration no work in the logging industry was available. The claimant contended that, as work was not available to him; his incarceration had no effect on his availability. He further contended that, as the charges for which he was incarcerated were dismissed and his arrest and incarceration had no legal effect, the matter of his incarceration should not be used to deny him benefits under the statute. In holding the claimant unavailable, the Tribunal stated, ". . . [T]he test is availability for work rather than the availability of work. Availability is defined as being accessible . . . Clearly, [the claimant] was not accessible for work while incarcerated and I may not consider whether or not work was available to him in deciding this matter . . . Although it is true that the claimant's arrest and incarceration have no legal effect under criminal and civil law, the dismissal is not binding upon administrative law (the law concerned here) because the question is not as to innocence or guilt but as to the claimant being accessible for work. Clearly, any situation, in this case incarceration, which renders the claimant inaccessible, affects his right to benefits under the statute."

B. Is or Was the Claimant Incarcerated or in Legal Custody?

1. Incarcerated

In some cases an incarcerated person is allowed to work while serving the sentence. The arrangement under which the claimant is allowed to work must be pre-approved so that the claimant is able to seek and accept work during the week claimed. It is not sufficient for the claimant to contend that approval to work would be granted if work were offered.

> Example: A claimant was incarcerated from April 16 through April 22 in the Nome Correctional Center. He made no attempt to obtain

a work release, but contended that he would have done so if he had been offered work. The correctional officer at the center testified that a work release could be granted if an employment offer were made. In denying availability, the Commissioner said, "Although [the claimant] may have been able to obtain a work release, it was not established that he could have done so. Additionally, 8 AAC 85.350 requires a person to be available for the immediate acceptance of work. The steps through which [the claimant] could have obtained a work release would undoubtedly have precluded an immediate response." (81H-141, August 7, 1981)

2. Halfway house, work furlough, or serving time on weekends

The eligibility of claimants in halfway houses, on work furlough, or those who are allowed to serve the time on the weekends depends upon the extent to which the conditions of the claimant's confinement permit unlimited employment. Both restrictions on hours and those on types of acceptable work must be examined.

3. Court ordered supervision

A claimant may be freed, usually pending a court appearance, but required to be closely supervised by another individual. If there is a person for whom it is possible and reasonable to undertake such supervision during working hours in the claimant's usual occupation, the claimant may be available.

Example: A claimant was required by the Court to have a custodian twenty-four hours a day. His father was willing to do this and it was reasonable, as the father was unable to work due to a back injury. The claimant was able to find several employers willing to hire him under these conditions. He was held available for work. (97 0651, April 9, 1997)

Likewise, there is a presumption that a claimant performing this supervision is not available for work, but presumption could also be overcome with sufficient facts.

Example: A claimant quit her job in order to provide court ordered supervision for her boyfriend, for whom visual/hearing supervision was required. She was held to be unavailable for work. (97 1368, July 9, 1997)

C. Is the Claimant Free on Bond?

A claimant who is under a peace bond (a bond conditioned on performance or non-performance of certain acts) may or may not be available, depending on how

much the claimant's field of employment is restricted. Again, both restrictions on hours and those on types of acceptable work must be examined.

D. Limitations on Work

A person under any kind of legal control may have various limitations put on the work they may perform. This may include forbidden places, restricted hours, or other limitations depending upon the situation. In each case, examine the effect the limitation would have on the claimant's field of employment.

285 LEAVE OF ABSENCE OR LAYOFF

A. Voluntary Leave of Absence

A claimant who is on a voluntary leave of absence, such as a vacation or sick leave of absence, is usually not available for work. The reason for the leave of absence almost always indicates the claimant's withdrawal from the work force. For example, such reasons as vacation, sickness, or domestic circumstances raise serious questions regarding the claimant's availability for work. Review the appropriate sections of this manual to determine the claimant's availability for work in relationship to the reason for the claimant's voluntary leave of absence.

B. Involuntary Leave of Absence or Layoff

A claimant who is on a mandatory leave of absence or layoff with a definite return-to-work date has good prospects for work. This claimant is available for work if:

- The terms of the involuntary leave of absence or layoff do not prohibit the claimant from accepting work during the leave period;
- The claimant is willing and able to accept temporary work during the leave period; and
- Temporary work is available in the local labor market.

Even where there is no temporary work in the local labor market, a claimant is available for work if the claimant is willing and able to accept permanent work at the cost of jeopardizing the claimant's return to the regular employer.

295 LENGTH OF UNEMPLOYMENT

Law: AS 23.20.505(a)

> *An individual is considered "unemployed" in a week during which the individual performs no services and for which no wages are payable to the individual, or in a week of less than full-time work if the wages payable to the individual for the week are less than one and one-third times the individual's weekly benefit amount, excluding the allowance for dependents, plus $50.*

A. General Discussion of Length of Unemployment

Under AS 23.20.385(b), the length of a claimant's unemployment is a consideration necessary to determine suitable work for the claimant, and therefore the claimant's availability for work. Under 8 AAC 85.410(a), the claimant may restrict availability to the claimant's customary occupation if the claimant has reasonably good prospects of returning to work in the claimant's customary occupation. A claimant needs to be available for suitable work outside their customary occupation if they do not have good prospects of returning to work in their customary occupation.

B. Work Prospects

A worker's prospects of returning to work determine the variety of occupations that are considered suitable for the worker. A lengthy period of unemployment creates a presumption that the worker's work prospects are poor, and therefore the worker must relax any restrictions regarding wages, conditions of work, and occupations, unless the worker can show that immediate prospects of returning to work are good.

Consider the local labor market before expecting the claimant to be available for suitable work outside the claimant's customary occupation.

> Example: In an economically depressed labor market in which employers are doing little or no hiring, requiring the claimant to seek work outside the claimant's customary occupation would not increase the claimant's chances of obtaining work.

C. Relaxation of Requirements

The first important consideration is that the claimant must be informed if restrictions that were allowable at the beginning of the claim are no longer permissible. Although the Unemployment Insurance Claimant Handbook refers to this possibility in general terms, it is not reasonable to expect the claimant to know precisely what wage, hour, or distance requirements may need to be relaxed, nor to know what other occupational choices the claimant must be prepared to accept.

305 MILITARY SERVICE

A. Pre-Induction

The fact that a person plans to enlist in the armed forces or may possibly be inducted in the future does not usually raise an availability issue. Because there is no certainty that the claimant will be ordered into the armed forces in the immediate future, the claimant is not restricted to temporary work only. Any reluctance of employers to hire a claimant in these circumstances in no way affects attachment to the labor force.

Where an induction date has been set, the claimant is restricted to temporary work in the interim. However, a claimant who is ready, able and willing to accept temporary work until beginning military service is available for work.

Military service, although not insured under the Employment Security Act, is nevertheless considered employment under the federal UCX program. Because military service is considered employment, the taking of qualifying physical or other examinations prior to induction will be considered part of the claimant's efforts to find work and will not affect availability.

B. Duty with Reserves or National Guard

Members of the National Guard or reserve units customarily attend drills or training sessions on weekends or during the evenings while employed. Because the obligation to attend such part-time training is accepted by employers as a condition of employment, it will not render the claimant unavailable.

Where the training takes up the full-time working hours customary in the claimant's occupation, such as encampments of a week or more, the claimant will be considered as fully employed for the week, and therefore not eligible.

NOTE: Remuneration received for inactive service performed by a member of the Alaska National Guard or Naval Militia is specifically excluded from the definition of wages under AS 23.20.530(b)(11). Therefore, such compensation may not be deducted from benefits otherwise due. Although the statute specifically covers members in Alaska units, the same policy is extended to units in other states.

C. Veterans' Reemployment Rights

In most cases, a serviceperson released from active duty has the right of reinstatement with the person's former civilian employer. However, if an ex-serviceperson does not exercise these reemployment rights, it will not, by itself, raise either an availability or a work refusal issue. The veterans' reemployment right statute merely obligates the employer to rehire an individual who applies for reinstatement; it does not mean that the claimant has a standing offer of reemployment. Moreover, especially in cases where the claimant's military service was for an extended period, changes in the claimant's residence, additional training and experience, or other factors, may make the former civilian

employment unsuitable. Of course, if the former employer offers work to the claimant, a work refusal issue is raised at that point. In addition, a claimant's refusal to consider employment with the former employer may indicate an availability issue on other grounds, such as withdrawal from the labor force.

360 PERSONAL AFFAIRS

A. General Discussion of Personal Affairs

Generally, a claimant's involvement in personal affairs is not compelling, unless the personal affairs involve a childcare obligation, a health matter, or a domestic emergency. See the appropriate sections of this manual for a discussion regarding these issues.

Routine errands, shopping, most medical and dental appointments, and similar personal business seldom require fact-finding when reported by a claimant, because they take up little time during the customary full-time work-week. A claimant can usually defer these matters if need be, and they are the sort of day-to-day affairs that people handle while employed. A claimant who conducts personal affairs during a week claimed is available for work if:

- The claimant is able and willing to promptly respond to accept an offer of suitable full-time work during that time, and

- The claimant is physically present and otherwise available for work in the local labor market for five full days during the claimant’s customary full-time work-week.

However, if a claimant regularly withdraws from the local labor force during the same working hours each week, then the claimant's withdrawal raises an availability issue of the claimant's willingness to accept full-time suitable work during the claimant's regular work hours. Similarly, a claimant who voluntarily leaves work because of personal affairs raises an availability issue because it may indicate that the claimant is not willing to accept suitable full-time work.

Also, even if a claimant's involvement does not require disqualification because the claimant has good cause for the restriction, if it completely removes the claimant from the labor force, the claimant is not available for work.

> Example: In 76A-427, a domestic emergency caused the claimant to remain away from his union hiring hall during a period when employment was virtually guaranteed to him upon reporting to the hall. Although the claimant's circumstances were compelling, his withdrawal from the labor force was complete, and he was ineligible.

B. Unavailability for Work during the Customary Full-time Work-Week or Inability and Unwillingness to Accept an Offer of Suitable Work

A claimant who is not physically present and otherwise available for work for a minimum of five full days in the customary full-time work-week, and is unable or unwilling to promptly respond to accept an offer of suitable full-time work because of the claimant's involvement in personal affairs is not available for work unless the claimant has a compelling restriction. If the claimant has a compelling

restriction, then the claimant is available for work so long as there remains a field of employment for the claimant's services. If the claimant's restriction is not compelling, then the claimant is not available for work if the restriction reduces the claimant's field of employment.

363 PERSONAL APPEARANCE

A claimant whose personal appearance makes the claimant non-referable is not available. The judgment of the interviewer in this respect is usually sufficient **so long as it is supported by adequate documented evidence**. To be referable for work in any job, the claimant must be:

- Clean and body-odor free of person and hair; and
- Dressed in clean clothing that is suitable for referral; that is, no:
  - shorts,
  - t-shirts with suggestive slogans,
  - bare midriffs,
  - tank tops,
  - clothing with holes, or
  - other clothing whose condition or style is not appropriate for job seeking.

A claimant who alleges a desire to dress appropriately but lacks the means should be offered referral to a service providing assistance, rather than disqualified. A claimant who chooses to appear in a non-referable condition is not available.

If a claimant comes to an employment service office inappropriately dressed when no offer of work or referral to work has been made, there is no issue of personal appearance. However, if the claimant has been told that a referral will be made, there is a question both of availability and of suitable work preclusion.

Other standards of clothing and appearance are employer-specific and are discussed in SW 363.

365 PROSPECT OF WORK

A. General

A claimant's prospect of work is basic to availability. The underlying question in any availability issue is what are the claimant's work prospects in light of any restrictions the claimant imposes?

B. Determine Work Prospects

To be found available for work, a claimant must have "reasonable work prospects" under the circumstances imposed by the claimant's restrictions and the condition of the labor market. The claimant's work prospects are assessed by comparing the claimant's restrictions against the known conditions of the labor market. For example, a wage restriction is compared against the prevailing wage in the area in which the claimant is seeking work.

A judgment of a claimant's work prospects depends on whether any imposed restrictions are compelling or non-compelling. For example, a claimant whose restriction is based upon disability will be found eligible even where the field of employment is severely restricted, so long as some potential employment remains. The claimant has good prospects under the circumstances.

Even extremely poor prospects are not significant if they are due to circumstances unconnected with the claimant. For example, a depressed labor market certainly affects a claimant's prospects of work but does not cancel availability for work. In such cases the labor market is withholding work from the claimant; the claimant is not restricting attachment to the labor force.

A claimant's work prospects may change, and the length of unemployment is an important indicator. If the claimant's period of unemployment is brief, work prospects should be considered good, unless concrete evidence to the contrary is presented. Conversely, a long period of unemployment shows poor prospects unless the probability of employment in the near future is shown.

C. Effect on Claimant's Restrictions

When faced with poor employment prospects a claimant may:

- Lower the acceptable wage and relax any other restrictions on conditions of work;
- Seek work in other related occupations; or
- Seek work in a wider geographical area.

The claimant with poor prospects may be expected to make accommodations to the field of employment to improve prospects for work. However, if a relaxation of

the claimant's restriction would not affect work prospects, since no hiring is being done, the claimant need not do so. On the other hand, the labor market in the claimant's occupation may be depressed, but if hiring is being done in other occupations for which the claimant qualifies, a change in the claimant's restriction is required.

D. Attachment to Former Employer

A claimant may expect to return to work for a former, usual employer, however there is no provision in Alaska statutes for a claimant to restrict availability on that account.

> Example: A claimant was on leave from his former employer under the Family and Medical Leave Act (FMLA) provisions. He could not accept work for any other employer without losing his FMLA and rehire status. He was willing to work for that employer only, and only in Anchorage, and expected an opening in two or three months. In denying benefits, the Tribunal held that the claimant had unduly restricted his availability. (99 0699, April 16, 1999)

370 PUBLIC SERVICE

For a discussion of military service, see AA 305 MILITARY SERVICE.

A. General

A claimant who is engaged full-time in public service is not unemployed, and the question of availability therefore does not arise. A claimant who is engaged only part-time in public service must be available for full-time employment and must be able and willing to forego public service to accept such employment.

B. Jury Duty and Service as a Witness

A claimant serving as a prospective or impaneled juror in any court is specifically exempted from availability requirements under AS 23.20.378(a)(1) if the claimant is in compensable claims status under the provisions of AS 23.20.378(a)(2). This exemption applies for as long as the claimant serves as a juror. The claimant must not refuse an offer of suitable work during the service as a juror or witness.

> Example: A claimant was working part-time on-call when he was called for jury duty. He informed his employer that he would be on jury duty. During the time of his service, he was offered no work. In allowing benefits for availability, the Tribunal held that although it could be speculated that work might have been offered had he not been on jury duty, there was no affirmative showing that he had missed work. (98 2519, December 11, 1998)

A claimant serving as a juror who is not in compensable claims status must be available for full time work. Payment received for service as a juror is deductible as wages under AS 23.20.360.

A subpoenaed witness is considered in the same light as a juror for the purposes of this policy, and any compensation received is deducted from benefits. On the other hand, a plaintiff or defendant is not performing a public duty common to all and is not considered available for work if the court appearance makes the claimant unavailable for work during their customary workweek.

C. Public Office

The availability of public office holders is dependent upon whether they are occupied full-time or part-time and whether they are able and willing to relinquish the office to accept work. A public office-holder employed full-time in that capacity is not unemployed. If the position is less than full-time and other work may be accepted, the claimant may be eligible. In some cases, public officers' duties require very little time and may be scheduled around working hours. In such cases, they may be able to engage full-time in their regular occupations.

375 RECEIPT OF OTHER PAYMENTS

375.05 GENERAL

A variety of payments, such as pensions, vacation pay, and the like, are deductible under AS 23.20.362, but that is not the issue here. An availability issue is still pertinent in such cases because the deduction may leave remaining benefits payable for the week, and the claimant must be available to draw them.

The receipt of any of the above payments does not show conclusively that a claimant is unavailable. Generally, the effect of the payment on a claimant's availability depends on the extent to which the payment indicates inability to work, or withdrawal from the labor force. Although in some cases, such as certain disability payments, receipt of such payments may create an initial presumption of unavailability. The receipt of the payment itself should never be the sole basis for the determination. In all cases, the claimant's willingness to work, the kinds of work the claimant is qualified and able to perform, and the remaining field of employment must be examined.

375.1 DISABILITY COMPENSATION

A. General

Although receipt of disability compensation always raises a question of availability, it will not always result in a disqualification. What must be resolved is the extent of the disability for which the compensation is being paid, and the remaining field of employment for occupations in which the claimant is able and qualified to work in.

In most cases, the terms under which the payment is made will be conclusive as to the claimant's condition. For example, compensation for total disability raises a strong presumption that the claimant is unable to work in any occupation. In order to overcome this presumption, the claimant must:

- Present medical documentation of the types of work that the claimant is able to do;
- Be willing to accept such work and actively seeking it; and

Have an identifiable field of employment for the occupations the claimant is capable of performing.

"Applications for medical leave and disability payments create strong inferences that an individual's ability to work is restricted and the individual has removed herself from the labor force. The inferences can be overcome by actions that support an individual's assertions to the contrary". (97 1937, September 25, 1997)

> Example: In the case cited above, the claimant was receiving medical disability payments from her former employer. She contended that the disability affected only the work that she had done for the former employer, and suggested other jobs that she was able to do. The Tribunal held her unavailable for work until she showed a search for work that included specifically applying for current openings in the fields she indicated.

B. Payments for Total or Partial Disability

1. Payments for total disability

   Payments for temporary or permanent total disability are based on the recipient's inability to perform any work suited to the claimant's qualifications and training. They thus imply a withdrawal from the labor force.

2. Payments for partial disability

The eligibility of a claimant receiving payments for partial disability, whether temporary or permanent, depends on the extent of the disability and the existence of other work the claimant is qualified to perform. Partial disability payments are based on a reduction in the recipient's earning capacity, not on a complete inability to work. A claimant who has a medically verified ability to work in occupations providing full-time employment may be found available.

3. Types of payments

a. Group health compensation

Compensation from a private health plan or employer-sponsored plan is usually paid for a period of recuperation following illness or injury, during which the claimant is presumed unable to work at the claimant's regular employment.

b. Old Age and Survivors' Disability Insurance (OASDI)

Because of the terms under which Old Age and Survivors Disability Insurance is paid, receipt of such a payment raises a strong presumption that the claimant is unable to do any work. **(The same is not true, however, of OASI retirement.)** To receive OASDI, the claimant must be "disabled" as defined under Section 223 of the Social Security Act:

(d)(1) The term "disability" means

(A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months; or

(B) In the case of an individual who has attained the age of fifty-five and is blind . . . inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

It is obvious that a claimant who meets the definition of "disability" above will probably be unable to meet the requirements of AS

23.20.378. However, the claimant's status may change, and the Social Security Act provides that an OASDI recipient may engage in "trial work" and still receive benefits. This trial period of work may extend for nine months without affecting the recipient's right to benefits.

The fact that performance of work under these circumstances would not jeopardize the claimant's right to OASDI benefits lends weight to the claimant's contention of willingness to work. However, the claimant must be seeking such work, and there must be a field of employment for these services.

Example: In A-1994, a claimant left his primary occupation as a plumber under a disability retirement, because of a heart condition. He later presented medical reports verifying that he could do light work which would require no heavy lifting and would permit him to rest whenever necessary. He then moved to a smaller community where his only prospect for work was through self-employment, since businesses that would have work that he could do were owner-operated. He refused to commute to a larger labor market twenty miles from his home because of his health. The claimant was held ineligible because the presumption availability was not overcome merely by medical evidence that he could perform light work, in view of his restrictions and attempts to seek self-employment.

c. Workers' Compensation

The receipt of Workers' Compensation carries less of a presumption of unavailability since it is often payable for partial disability or payable in connection with the claimant's normal occupation. Nevertheless, disability in the claimant's regular occupation often implies an inability to work in any occupation.

Workers' compensation payments are not deductible from UI benefits under the Employment Security Act. It is therefore possible for a claimant to receive both UI and some types of Workers' Compensation benefits. However, AS 23.30.187 prohibits payment of temporary or permanent **total disability** Worker's Compensation payments to any person receiving UI benefits.

C. Overcoming the Presumption of Inability

The presumption of inability can be overcome for a claimant who can establish that the qualifications and ability to do some light work of a specific identifiable kind, if the claimant's statement is supported by corroborating evidence in the

form of a doctor's statement. Any contradiction between statements made for receipt of the health benefit and statements made for receipt of unemployment insurance benefits must be viewed closely.

Medical verification of the claimant's actual disability, and a close examination of the terms of the disability compensation, the claimant's training, experience, and willingness to work are all required, as well as the existence in the labor market of work that the claimant can and will do.

375.2 RETIREMENT

Receipt of an annuity or pension, including Old Age and Survivors Insurance, may indicate voluntary withdrawal from the labor force or the inability to work. In addition, the terms under which the pension is paid may create a disincentive to work. All these possibilities must be explored.

NOTE: Pensions, annuities, and other retirement pay may be subject to deduction from benefits under AS 23.20.362. Nevertheless, the availability issue must be examined in all cases where some weekly benefit amount remains to the claimant after deduction of the disqualifying income.

A. Reason for Retirement

The first necessary step is to determine whether the retirement was voluntary or involuntary. The presumption that a claimant who has retired voluntarily has withdrawn from the labor force is very strong. This presumption can be overcome only by credible evidence that the claimant's circumstances have changed, and usually requires a showing that employment has now become financially necessary.

> Example: In AW-417 the claimant voluntarily retired, bought land and subsequently occupied himself with maintenance and development of his property. Due to unexpected expenses, the claimant was required to find employment. He made an extensive work search and imposed no restrictions, stating that he would except any work anywhere in Alaska that he was qualified to perform. The claimant was found available in this case because it had become financially necessary for him to work and he had made a diligent work search.

Involuntary retirement does not create so strong a presumption of withdrawal from the labor force. However, the fact that a claimant has been involuntarily retired does not necessarily mean that the claimant is in the labor force. The claimant may not be truly interested in work, especially if it would affect a pension. Retirement forced upon the claimant by disability raises other questions. See AA 235 HEALTH OR PHYSICAL CONDITION.

B. Terms of Retirement

The next step is to determine whether the terms of the retirement compensation would affect the claimant's ability or willingness to work. Receipt of a pension may be conditioned on the claimant not performing any subsequent work; or the pension may impose an earnings limitation. In these cases, the claimant is eligible only if:

- The terms of the retirement plan would not significantly affect the claimant's availability to the labor force, or if they do

- The claimant is willing to forego the pension or accept a reduction in the pension amount if the claimant finds work, and

- The claimant's restrictions, qualifications, and work search indicate that the claimant is in the labor force.

> Example: The recipient of OASI (Social Security) is not prevented from working. Rather the amount of OASI is adjusted when the recipient's earnings reach a certain level. Therefore, acceptance of work does not mean a loss of retirement. Claimants under the age of sixty-five are permitted some earnings before any deduction is made from retirement benefits. Recipients age sixty-five to seventy-two are permitted to earn larger amounts before deduction. Those over seventy-two have no earnings limitation at all.

The first consideration outlined above was whether the terms of the retirement would affect the claimant's ability or willingness to work. In the case of OASI, this means the extent to which the earnings limitation would affect the claimant's compensation. If the facts indicate that there is little likelihood that the claimant will exceed the earnings limitation for the year, the receipt of OASI would not constitute a strong disincentive to work. The fact that the claimant is willing to accept part-time work, which will not affect OASI is irrelevant. Many retired individuals take advantage of the earnings allowance by accepting part-time work to supplement their benefits. This is a reasonable course of action, but the fact remains that availability for **full-time work** is the requirement.

If acceptance of full-time work would reduce or eliminate the claimant's OASI benefits, the claimant must be willing to forego the pension to accept full-time work and the statement that the claimant would do so must be credible. The best evidence that the claimant is actually interested in full-time work would be the performance of such work while drawing retirement benefits. Other corroboration of the claimant's interest in working would include a showing of financial necessity for the wages, or a diligent work search effort.

The claimant's qualifications, restrictions and physical ability to work must also be examined in light of the local labor market. Often the claimant must be less selective as to acceptable types of work and conditions of work. A retired claimant who is willing to work and seeking work, and whose restrictions are outside the claimant's control, is eligible if there is an identifiable field of employment for the claimant's services.

415 SELF-EMPLOYMENT OR OTHER WORK

415.05 GENERAL

A. General

Self-employment may raise both an availability and an unemployment status issue, as well as a question as to usability of wages. For a discussion of the issue of "employment" in self-employment, see TPU 415.

Involvement in self-employment is disqualifying under the availability provisions to the extent that it removes the claimant from the labor force; that is, to the extent that it lessens the person's ability to seek or accept gainful employment with employers.

> Example: A claimant operated a residential care facility with her partner. She was willing to rearrange her work hours to accommodate employment and had applied for work with many employers. The Tribunal held that she was available for work. (97 1870, September 12, 1997)

> Example: A claimant operated a bed and breakfast as self-employment which she was not willing to abandon for full-time work. She was willing to accept temporary assignments, but had also refused them when she was occupied with her self-employment. She was not available for work. (97 0684, April 11, 1997)

The Commissioner has stated, "In determining whether or not a self-employed individual is available for work several factors must be considered: (1) Availability for regular employment, (2) hours per week devoted to self-employment, (3) net income, (4) nature of regular employment, (5) whether he engages in self-employment during the course of regular employment, and (6) efforts to seek work in his regular line." (79H-33, May 4, 1979)

In all cases, the claimant's net income (gross receipts minus business expenses) must be reported as earnings. The income should be pro-rated over the period in which the claimant was involved in self-employment. See MS 375.05, C, 1, b, "Business expenses," for a definition of business expenses.

B. Restrictions

A claimant who, due to self-employment, puts any restrictions that in any way limit the field of employment is not available for work, even if some field of employment remains.

> Example: A claimant left work as a clerk to pursue self-employment as a personal shopper. She was willing to accept only night work that would not

interfere with her hours of business. The Tribunal held that she was unavailable for work. (98 0269, March 6, 1998)

C. Availability to a Labor Market

Some occupations, notably mining, fishing, and trapping operations are often, though not always, remote. The problem of distance to a reasonable labor market itself may be an insurmountable barrier to the claimant's availability. A claimant encamped for the summer at a remote site is simply not realistically available for work. However, where the operation is close to the claimant's residence, the claimant is accessible to the labor market, and the self-employment is incidental to employment, the claimant may be found available.

D. Amount of Involvement

1. Involvement within normal working hours

Generally, a claimant who is involved with self-employment during a significant part of the normal working hours is not available. The presumption in such cases is that the self-employment activities are so extensive that they will interfere with attempts to find work or with acceptance of work.

The hours of part-time self-employment may occasionally interfere with normal working hours but be so flexible that a claimant could reschedule the time if the claimant finds work. If the claimant has previously worked while engaged in self-employment, this could prove that the claimant could do so again.

Example deleted.

2. Involvement outside normal working hours

If the claimant's self-employment is carried on entirely outside the normal working hours in the claimant's occupation, there is usually no availability issue. If the claimant works too many hours on self-employment outside the normal working hours and it would not be reasonable for the claimant to also work a full-time job, then the claimant is not available.

E. Willingness to Abandon Self-employment

Unless the claimant clearly shows the willingness and ability to abandon self-employment or shift the hours of involvement in self-employment so that it has no effect on the claimant's availability, the claimant is not eligible. The actual hours the claimant spends on the business, the investment, the permanence of the business, any contractual obligation, the disposability of the business, the

number of employees, and the ability of others to run the business in the claimant's absence are all factors to be considered.

> Example: A claimant was self-employed as a free-lance photographer. The Tribunal found him available because as a photographer he could schedule photo sessions so they would not interfere with his ability to seek and accept work. (97 1611, August 1, 1997)

Where there is a substantial investment in capital, or where there are contracts that must be honored, the claimant's statement of willingness to abandon the business is open to question. On the other hand, where the employment appears to be of a stop-gap nature, or where the investment is small and the assets fluid, it is more credible that the self-employment is incidental to the claimant's search for work.

> Example: In AW-3125, the claimant operated a tailor shop in his home. He had invested approximately $300 in equipment, and was willing to close his shop whenever necessary to accept work. Although he attempted to keep regular business hours, he demonstrated his attachment to the labor force by immediately closing his shop in response to a referral to work. Because his investment was small and he was able to immediately accept work, he was found available.

F. Efforts to Seek Work

Because involvement in self-employment implies a withdrawal from the active labor force, it is usually not enough that the claimant state a willingness to abandon self-employment or to arrange hours. The claimant should show attachment to the labor force through some active search for employment.

If the claimant is attempting to set up a business in the same line of work in which the claimant was previously employed, determine whether the claimant's work search is directed towards obtaining business for the claimant's company or towards finding employment. If the evidence indicates that self-employment is the primary consideration, the claimant is not eligible

> Example: A claimant was employed as a carpenter. After being laid off for lack of work, he obtained a subcontractor's license and began actively pursuing the development of a business. He contacted several other contractors in his area, both to obtain subcontracts for his own company and also to solicit work as a carpenter for himself. He obtained some temporary framing work, indicating at one point that the framing work was considered part of his own business, but later indicating that he was working for wages. The Tribunal held that the evidence did not show that the claimant was primarily interested in obtaining work, but was rather substantially involved in his business enterprise. (82UI-1643, July 21, 1982)

415.16 CORPORATE OFFICER OR EMPLOYEE

A. General

This section is covered in greater detail in MS 420.1, Corporate Officer or Employee.

A corporation is a legal "person," and a person employed by a corporation, no matter who owns it, is considered as if the worker were employed by an unconcerned third party. A corporate officer must be considered under the provisions of AS 23.20.526(a)(19) in terms of coverage. However, the worker is employed by the corporation, whether or not covered.

B. Reporting Wages

If the business is ongoing, the claimant's wages must be reported. The wages must be commensurate with the amount of time and effort put into the business, and may not be considered as stock or as put back into the business without first passing through the hands of the claimant.

C. Availability

When the claimant is an owner, officer, or even employee in a family-held corporation, the question of the claimant's genuine availability arises if the corporation is still operating or has only temporarily suspended business. In these cases, if generally employers in this field would not hire a member of a competing business, the claimant may not choose to work only in the same narrow field but must immediately broaden the work search area to include non-competitive employers.

> Example: An incorporated tour company closes for the winter season, and the family members who own and operate it become unemployed. The wife is the company bookkeeper. Other tour companies will not hire a competitor as a bookkeeper in their business. To be considered available for work, she must look for work in her field of expertise with other types of employers.

415.2 FAMILY ENTERPRISE

There are special problems in determining the unemployment status and availability of a claimant engaged in a family enterprise, because both the business relationship and the duties shared among the family are seldom clearly defined.

A. Unemployment Status

AS 23.20.526(a)(4) of the Employment Security Act excludes from the definition of "employment" any service "performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of eighteen in the employ of his father or mother." However, this exclusion is for **coverage** only, and since such coverage can be elected by the employer, a person employed by a member of the family is nevertheless employed as surely as if the employment were for a stranger.

On the other hand, if the family enterprise is a partnership, the family member who is a partner in the business is self-employed and there is no employer-employee relationship.

If the family enterprise is a corporation, see MS 420.1, "Corporate Officer or Employee."

B. Reportable Earnings

If the family enterprise is a partnership, the amount of reportable earnings from a family enterprise is also a problem and requires an examination of the actual business relationship. If the enterprise is a partnership, as for example, between husband and wife, the claimant is required to report only half the earnings from the business. However, if the claimant is clearly the proprietor of the business, regardless of actual duties or the amount of time spent, the claimant is responsible for reporting all of the net earnings of the business as wages. If the claimant has no direct proprietary interest but contributes significantly to the running of the business, the claimant must also report half the earnings as wages.

If the enterprise is not a partnership, the claimant must report wages. The wages must be commensurate with the amount of time and effort put into the business. They may not be considered as stock or otherwise put back into the business without first passing through the hands of the claimant.

C. Availability

A claimant, who is not at the time an employee, is employed less than full-time, earns less than excess, and is available for work may be eligible. The claimant's availability must be determined on the basis of the extent of the claimant's activity and obligation to the family enterprise.

A different problem arises when the claimant is laid off from the family business but intends to resume work for it at a later time. In these cases, if generally employers in this field would not hire a member of a competing business, the claimant may not choose to work only in the same narrow field but must immediately broaden the work search area to include non-competitive employers.

> Example: A construction firm closes for the winter season, and the family members who own and operate it become unemployed. The wife is the company bookkeeper. Other construction firms will not hire a competitor as a bookkeeper in their business. To be considered available for work, she must be available for work in her field of expertise with other types of employers.

When the claimant participates in the family enterprise after becoming involuntarily unemployed, the question of availability is more difficult. Quite often an individual customarily works for hire, while at the same time the claimant and members of the immediate family are engaged in some type of business such as small grocery store, motel, or the like. Usually, when not employed for hire, the claimant performs a share of services in that enterprise. If the claimant is able and willing to drop the services to accept suitable work, the claimant may be found available.

> Example: A claimant helped his brother clean up their father's business after the father died. He helped move equipment and dealt with creditors and the Small Business Association. He was not paid for his help, and he was willing to accept other work. The Tribunal found him available for work. (99 0755, April 21, 1999)

Also examine the remuneration received for such services, although it is not unreasonable that a person perform such services without any monetary or other return.

The important question is usually whether the claimant's service is an essential factor in producing the income yielded by the business. Where the claimant's duties can be easily assumed by someone else in the family and where the services do not amount to more than the claimant has customarily performed while working full-time, this activity would not ordinarily affect the claimant's availability for work.

415.35 OTHER TYPES OF SELF-EMPLOYMENT

A. Agricultural

1. General

A self-employed farmer, rancher, or homesteader may be available for work in spite of the fact that the worker has an investment in and performs services on the worker's land. Merely because a claimant owns, leases, or lives on a farm or homestead, the claimant is not considered unavailable. Two basic problems exist in these circumstances; one has to do with the claimant's distance from the labor market and the other has to do with the effect on the claimant's availability caused by the agricultural pursuits.

2. Remote residence

If the claimant acquires a farm or homestead primarily as a home, and agricultural pursuits are secondary, there is normally no issue of availability on the basis of self-employment. However, a remote address raises questions of accessibility to the labor market. If the claimant is homesteading, this consideration is particularly important, since there generally is a greater lack of a community to support an active labor market.

There is also an additional consideration of the claimant's ability to be attached to a labor market in another area if one does not exist in the immediate locality. The mere statement that the claimant will take work in any area that it is available will be accorded little weight if the claimant has to remain on the homestead or farm for any reason. This statement should be weighed against the cost, time of travel, and distance to the adjacent labor market.

For a full discussion of remote residence, see AA 150.05 AREA OF RESIDENCE.

3. Restrictions due to agricultural self-employment

Where the claimant is actually engaged in agricultural pursuits, availability is even more questionable.

If the hours that the claimant is required to spend on farm work restrict the claimant to only intermittent or part-time work, the claimant is unavailable. If the claimant cannot abandon agricultural self-employment to accept full-time work during the agricultural season, the claimant is also ineligible.

While not conclusive, the type of farm often carries much weight in establishing the credibility of a claimant's statement of availability.

Consider the amount of time necessary to complete farm duties; the amount of livestock owned; the cost of hiring help to perform the duties compared with the wages the claimant would earn; and the particular season during which the claim is filed.

The seasonality of agriculture is of particular importance. If the claimant has established a history of full-time work during the off-season, the claimant may be held available while not engaged in farming. However, if the claimant is partially engaged in working on the farm during the off-season, and therefore restricted to part-time work, the claimant is generally unavailable

B. Artist and Artisan

Usually a claimant does artwork at home. The claimant is therefore more accessible to the labor market than with other types of self-employment. As long as the claimant is ready, willing, and able to accept full-time work if it were offered, the claimant may be considered available. However, if there is any indication that the claimant intends to pursue art work full-time and is no longer in the labor force, the question of the claimant's willingness to work must be resolved.

C. Commercial Fishing

When a claimant is involved in commercial fishing, the first question to be answered is whether the claimant is self-employed or is working for another. A claimant who is employed by another as a crewmember on a boat, whether paid by the hour or on a share basis is considered the same as any other employed individual. No availability issue is raised unless it is clear that the claimant is inaccessible to or unwilling to accept full-time employment. If the claimant is working full-time as a crewmember (at least 40 hours per week), the claimant is fully employed under AS 23.20.505. Time worked in such cases includes hours spent in preparation, repairing fishing gear, and work on the boat itself.

The availability of a **self-employed** fisher during the fishing season is very questionable, regardless of the actual time spent fishing. Nevertheless, availability must be determined on a week-by-week basis. The claimant may be available during the week in which no fishing is done so long as the claimant's time is not taken up with other tasks related to fishing, and it is credible that the claimant would abandon fishing to accept full-time employment.

Example: A commercial fisherman began salmon fishing on his gillnet boat on June 20, 1997. He was working well over 40 hours per week and was not available for any other work while fishing. He was held to be unavailable during the fishing season. (97 1861, September 5, 1997)

On the other hand, a claimant who is involved for a few hours occasionally hand-trolling while unemployed, and whose investment is small, does not necessarily indicate unavailability because the fishing is incidental to employment.

A person self-employed in fishing may be available during the off season, especially one who has established a pattern of remunerative employment during those months.

D. Mining

In mining, as with commercial fishing, care must be taken not to confuse employees with the self-employed.

E. Professional Work

The availability of professional people may be complicated by two factors characteristic of professional work. First, professional work may be performed as self-employment or in the employ of someone else. For example, a photographer may do only freelance work, or be a salaried employee of a newspaper. Although this characteristic is true, to a lesser extent, of nonprofessional work, it occurs much more often in professional occupations.

Second, professional people do not normally seek work in the same manner as nonprofessional workers. Most professionals secure their work through agents, professional associations, or by submitting work samples or resumes.

It is therefore often difficult to determine whether the way in which the claimant seeks work while unemployed is directed toward independent establishment or toward securing work with an employer. For example, a writer may intend only to sell to a publisher or, on the other hand, may be writing samples to show prospective employers.

Generally, if the intent of the claimant's efforts is for a purpose other than to obtain work with employers, and if the claimant's efforts interfere with attempts to find work with employers, the claimant is unavailable. In addition, if the claimant has not at least made the customary efforts to obtain work in the claimant's occupation, the claimant is not eligible. This would include membership in appropriate professional organizations.

If a claimant is working on a project with the intention of selling it, the presumption is that the claimant is involved in self-employment, not in a search for work.

F. Salesperson

Although some types of sales positions are not covered for unemployment purposes, the question of whether a claimant who is a salesperson is an

employee is readily answered by the degree of independence or the lack of it. Whether or not the claimant is paid a salary, a draw against a commission or solely on commission is not determining. The question goes beyond whether the claimant may set hours of work or field of endeavor. A salesperson is an independent contractor if and only if the salesperson can set the price of the item sold and the terms of a contract of payment without recourse to a third party for approval. A claimant who is totally free to set not only hours and days worked, but territory covered, prices, and payment schedule, is an independent contractor, and, as such, self-employed. In all other cases, the claimant is employed.

Regardless of whether the salesperson is an employee or a self-employed contractor, one who is engaged full-time in sales is not unemployed under AS 23.20.505. Generally, a claimant who devotes in excess of 40 hours per week is considered fully employed. However, in the case of salespeople, this general rule should be applied with caution. Sales work often involves many extra hours outside normal working hours in arranging contacts and pursuing leads. Many times these extra hours are scheduled around full-time employment. Usually, therefore, a salesperson whose involvement during normal daytime working hours amounts to fewer than 40 hours per week will be considered partially employed.

All earnings, including commissions, must be reported. See Misc. 375.075 Back Pay, Bonuses, Commissions, Loans and Draws for information on how to deduct commissions.

If the salesperson is an employee who is employed less than full-time and whose earnings are less than excess, availability will be determined as with any other partially employed claimant. The claimant must be available for and seeking full-time work without undue restrictions. If the selling job is only a **secondary occupation**, the claimant is available so long as the claimant is seeking work in the claimant's primary occupation and there is a field of employment.

> Example: A pilot accepted work as a straight commission salesman while unemployed. He was expected to attend half-hour sales meetings each morning and work such hours as warranted by his own development of sales prospects. He rarely worked during normal business hours because prospects were principally employed workers in his line of sales, but he did work two or three hours in the evening some six days a week. He earned a $300 commission during one week, and this represented his total sales for a three-month period, during which time he continued to seek work as a pilot. It was held that the claimant was unemployed and eligible while engaged part-time in his selling activity, except for the week of commission earnings. AW-447

A claimant who is employed part-time in sales where sales work is the claimant's **primary occupation** is available if the claimant is willing to take full-time sales

work and there is some expectation that such work is available. If there is no expectation that the claimant can become fully employed in sales work, and the claimant is unwilling to take other employment which offers the possibility of full-time work, the claimant is unavailable.

A claimant who is **self-employed** part-time in sales work is unavailable if this involvement prevents the claimant's seeking and accepting full-time employment. The hours of the claimant's involvement, the investment, whether the claimant has worked previously while engaged in selling, and the claimant's attempts to find work are all important.

G. Trapping

Trapping operations may range from a weekend trap-line near the claimant's home to a full-scale operation involving absence from the labor market for days or weeks. The extent of a claimant's involvement is therefore important in determining availability.

> If the claimant's trapping is intermittent and does not involve absence from an address where the claimant is able and available to promptly respond to accept an offer of suitable full-time work for five full days during the claimant’s customary workweek, the claimant may be available.

H. Child Care

Generally, a claimant who performs child care work in their own home is considered self-employed, particularly if the claimant cares for children from more than one family. On the other hand, a claimant who works in the home of the child, under the direction and control of the parents, is usually an employee.

A claimant who cares for children for others is unavailable for work if the care is given on a fulltime basis or if the claimant cannot or will not accept fulltime work because of obligations to the children's parents. Claimants who will accept other work and show a definite attachment to the labor market may be eligible.

> Example: A claimant provided childcare for a friend in order to provide a playmate for her own preschool child. Her friend insisted on paying her, about $100 per week, $50 of which she used for supplies and other expenses. She worked fewer than forty hours per week. She did not have a business license and did not care for other children. She was willing and able to accept fulltime work, and looked for fulltime work in that time period. The Tribunal held that the claimant was able and available for work, but that she did need to report the earnings, less what she spent on supplies. (99 2025, September 10, 1999)

450 TIME

450.05 GENERAL

A. General

A claimant must be available for all customary hours, shifts, and days of work in the occupation in which the claimant is seeking work, unless the claimant has a compelling reason for restricting the potential field of employment.

If the claimant has a compelling reason for restricting the potential field of employment, the claimant is eligible so long as some reasonable prospect of full-time work remains under the restriction.

A claimant who does not have a compelling reason for a restriction is ineligible if the claimant's potential field of employment is restricted to any significant degree. If the claimant's restriction has no significant effect on the field of employment, then it may be disregarded.

If the claimant's restriction virtually eliminates the claimant's field of employment, then the claimant is ineligible, regardless of whether the claimant has good cause for the restriction.

B. Customary Hours and Days of Work

A claimant is required to conform to the customary conditions of employment in the claimant's occupation. These customary conditions of employment in the labor market vary from occupation to occupation as well as from locality to locality within the same occupation. The customary pattern to which a claimant must conform is not based on the claimant's past hours and days of work; it is based on the customary hours and days of work of the occupation for which the claimant is qualified and seeking employment.

450.1 DAYS OF WEEK

Claimants often exclude, for religious or other reasons, certain days of the week on which they will consider accepting employment. The same test is applied here as with any other "time" restriction:

- What are the customary days of work in the occupation and locality?
- What is the reason for the claimant's restriction?
- Is it compelling or not? (See the appropriate category dealing with the reason for the restriction.)
- What is the remaining field of employment?

In some occupations, work on Saturdays or Sundays is so often required that a claimant's unwillingness or inability to work on either of these days would result in a claimant's being held unavailable in that occupation. In other occupations, weekend work may be so infrequent that the claimant's availability on weekends is not an issue. A claimant may have good cause for restriction to certain days, but by ruling out an entire day or days of the week may virtually eliminate the field of employment. This is not the same as eliminating certain hours of certain days in the week however. In all cases, the actual effect of the claimant's restriction must be documented.

A restriction to fewer than five days per week would be disqualifying.

450.15 HOURS OR SHIFTS

A. General

A claimant's availability is always questionable whenever the claimant excludes hours or shifts customary in the claimant's occupation. The claimant is unavailable if the restrictions are non-compelling and affect the claimant's prospects for work or if, though compelling, they result in the elimination of a reasonable field of employment.

If the occupation in which the claimant is seeking work requires shift work, the claimant must be available for all shifts unless the claimant has a compelling reason to restrict work during certain hours. Usually, but not always, a claimant who has a compelling restriction as to certain shifts will be found available, because there are usually other shifts that provide a reasonable opportunity for full-time employment.

However, the important consideration is what the claimant's prospects actually are under the restriction imposed.

> Example: A claimant who is new to the job may have virtually no chance of being hired on the desirable day shift as a new employee in certain occupations. A claimant who has restricted employment to the day shift, even for a compelling reason may be unavailable.

A shift restriction that has no significance in the claimant's occupation should be ignored.

> Example: The claimant had been originally disqualified because she stated that she was available for work as a nurse only on the day shift. However, the hospital in the small community where the claimant lived did not employ nurses on a night shift. The claimant was found available, even though nurses are customarily employed on the night shift, because this was not the custom in the claimant's particular labor market. A-5037

B. Prevailing Hours

A claimant is not required to be available for hours that are substantially less favorable than those prevailing. Exactly what are "substantially less favorable" hours is often difficult to determine. Excessively long hours would usually be considered unfavorable, but some claimants may insist upon them. So long as the claimant is available for the usual hours in the claimant's occupation, the claimant is available.

C. Irregular Hours

A claimant who restricts availability only to irregular hours is usually unavailable, since very few occupations or employers allow the employee the freedom to work at the hours of the worker's own choosing.

On the other hand, where irregular hours are customary and necessary in the occupation, a claimant seeking work in one of these occupations must be willing to work the required hours even though they may be inconvenient. Only where a compelling reason for objecting to irregular hours is posed may the claimant be found available.

The fact that the hours of offered work are unusual does not necessarily make them unsuitable. However, in considering a claimant's availability, it is not necessary to decide whether unusual hours would actually be a disadvantage to the claimant. And even though a claimant might not have good cause to refuse work requiring unusual hours, there is no reason to require a claimant to be available for such hours, unless this would significantly improve the claimant's actual prospects of work.

D. Long or Short Hours

A claimant who insists upon overtime, where such a condition is not prevailing in the occupation, is usually ineligible. Very rarely will the claimant establish a compelling reason for requiring overtime work. The mere fact that the claimant would increase take home pay is insufficient.

An insistence upon less than full-time hours is disqualifying, regardless of the reason for the restriction. Availability for full-time work is a basic requirement. The claimant is, of course, not required to be available for more hours than those prevailing. However, long hours may be prevailing in certain occupations, and thus be normal full-time work. A claimant who refuses to consider working those hours is generally ineligible.

It must be emphasized that the mere fact that the claimant has limited hours of work during the day does not mean that the claimant is unavailable for full-time work. For example, a claimant normally employed in shift work may impose a compelling restriction that rules out work between the hours of 3 p.m. and 5 p.m. each day. So long as there is a reasonable possibility of securing work on another shift that would provide full-time hours for the week, the claimant may be eligible.

E. Night Hours

Since claimants often have compelling reasons for refusing nighttime employment, the remaining field of employment must be examined closely.

If the claimant's occupation entails only daytime hours, there is obviously no availability issue, regardless of the reason for the claimant's restriction. If the occupation does require night shift work, but there are other shifts available to the claimant, the claimant may be eligible if the restriction is a compelling one. Or the claimant may be fitted for secondary occupations that would support a finding that an adequate field of employment exists.

F. Statutory or Regulatory Standards

Any work is unsuitable which requires hours in violation of a federal or state law. The Alaska Wage and Hour Act contains the standards enforceable with respect to hours. See SW 450.05 C, "Hours," for a more complete discussion.

450.2 IRREGULAR EMPLOYMENT

A. Occupations Characterized by Irregular Employment

Some industries are unable to provide steady employment. For example, stevedores may work long hours when a ship is in port and then be subject to a spell of unemployment. In such occupations, normal full-time work consists of irregular hours and days. A claimant seeking work in an occupation of this sort is forced to comply with irregular conditions, and no issue of availability will be raised unless there is an indication of unavailability during the period the claimant is not working.

B. Restriction to Irregular Employment

If the claimant's occupation normally provides permanent full-time work and the claimant will accept only irregular work, a presumption of unavailability arises. The fact that the claimant may have previously worked in the same occupation under irregular conditions has very little significance.

Even though the claimant has a compelling reason for the restriction to irregular employment, the claimant is usually ineligible because no reasonable field of employment remains.

> Example: A claimant had been convicted of a criminal offense but was allowed to serve his sentence at the rate of one week per month. The claimant contended that, as he was available the other three weeks out of the month, he should be eligible for benefits in those weeks. In holding the claimant ineligible during the weeks the claimant was not incarcerated, the Commissioner said, "[T]he lack of any substantial field of employment for [the claimant] during any claim week was overlooked by the tribunal in its preoccupation with the week of incarceration. In other words --- for whatever reason [the claimant] is available only for part-time, intermittent, and temporary employment, all of which --- for whatever reason --- is virtually nonexistent in [the claimant's] labor market area during the period at issue." (79H-29)

C. Refusal to Consider Irregular Employment

Although a claimant is not entitled to the restriction to irregular employment, the fact that the employment is irregular does not necessarily make it unsuitable. This is true even in occupations where employment is normally permanent and full-time. In the absence of actual difficulties, such as transportation and childcare, mere inconvenience would not be a sufficient reason to exclude irregular hours or days.

450.4 PART-TIME OR FULL-TIME

A. Definition of Full-time Employment

"Full-time employment" is defined as the customary number of hours worked on a weekly basis by workers employed in a given occupation in a given labor market area. Note that both the occupation and the labor market area must be considered. Forty hours per week is the normal full-time work-week in the majority of occupations, but it may be greater or less depending on circumstances. The customs of the occupation are controlling. The claimant's own past hours of work are not relevant.

B. Partially Employed Claimants

A claimant who is working part-time must nevertheless be available for full-time work, unless the claimant's current part-time job has definite prospects of turning into full-time work in the immediate future. In the latter case, the claimant may consider only part-time work that would not interfere with the return to full-time work. If the claimant has **no prospects of full-time employment**, the claimant must be available for full-time employment even if acceptance of full-time work means leaving the part-time job.

C. Restriction to Part-time Work

A claimant who restricts hours of availability to **part-time work** is not available, regardless of the reason for the restriction.

> Example: A claimant restricted his availability to part-time work because he wanted to work in his own business. Although he stated that he was willing to accept full-time work, the Tribunal found him unavailable until he showed that he would accept full-time work by accepting a full-time job. In denying benefits for the earlier period, the Tribunal held that, “Availability for work is as much a state of mind as it is a state of actuality. Although the claimant states that he would have accepted full-time employment, his desire and his work search were towards part-time employment." (98 0923, June 2, 1998)

D. Limitation of Acceptable Shifts

If the claimant's occupation entails shift work and the claimant's restriction rules out one or more shifts, the claimant may be eligible if the claimant has a compelling reason for the restriction and there are other shifts that provide a reasonable prospect of full-time weekly hours. The exclusion of all or part of a shift is not necessarily an exclusion of full-time work.

> Example: A waitress, was able to work days or swing-shift but not the graveyard shift from 10 p.m. to 7 a.m. because of child care. She was held

fully available because her compelling restriction did not rule out a substantial field of full-time employment. (78B-1469)

E. Restriction to Full-time Work

Although availability for full-time work is a requirement, this does not mean that part-time work is unsuitable. If part-time work is customary in the occupation, the claimant who rules out such work will be eligible only if the claimant has a compelling reason for the restriction. (For a refusal to consider temporary work see AA 450.55 TEMPORARY OR PERMANENT.) Where part-time employment is not customary in the occupation, the claimant's restriction to full-time work has no effect on the claimant's availability and may be disregarded.

Example: A union member unemployed for a short while and registered with his union states that he will not accept part-time work. At that point in his unemployment, only his former union occupation is suitable for him. Workers in his occupation almost never work less than eight hours per day. The claimant's restriction in this instance has no significance.

450.45 SEASONAL

Many occupations are subject to seasonal fluctuation. The majority of the workers in occupations such as fishing, agriculture, logging, construction, and education, are seasonally employed at some time or another during the year. There is no presumption that a seasonally unemployed individual is not available for work. The presumption must be shown on the basis of the facts in each case. Because Alaska law does not deny benefits to seasonal workers, it must be assumed that the legislative intent is to pay benefits to seasonal workers unemployed through no fault of their own, and who are willing to accept suitable employment during the off season.

A seasonally unemployed worker will not be required to leave the worker's place of residence to find other work during the off season. However, a seasonally unemployed worker who travels to another labor market must conform to the new labor market conditions. This includes being available for other work that the worker is qualified and able to perform.

As with any other temporarily unemployed worker, a claimant who is seasonally unemployed must be available for any temporary work for which the worker is qualified for during the off season. Work outside the claimant's principal occupation may be considered suitable immediately upon the claimant becoming unemployed. The provisions of 8 AAC 85.410, which allow a claimant to seek work in the claimant's principal occupation for the first thirteen weeks of his unemployment, do not apply to the seasonally unemployed worker. Work in the claimant's principal occupation is usually unavailable under any circumstances during the off season, and the claimant is therefore not entitled to restrict acceptance of work to that occupation.

Even permanent work that would interfere with the claimant's return to the claimant's seasonal employment may not necessarily be unsuitable. However, before requiring a claimant to be available for such work, the stability and pay of the offered permanent work, the claimant's prospects for future employment in the claimant's seasonal occupation, and the amount of unemployment the claimant regularly experiences in the claimant's seasonal occupation should be examined. See SW 450.45.

450.55 TEMPORARY OR PERMANENT

Although availability for **full-time** work is a necessary condition of eligibility for all claimants, availability for **permanent** work is not an inflexible requirement. In some cases, a claimant may have good cause for a restriction to temporary work. Conversely, in some cases a claimant may have good cause for refusing to consider temporary work.

A. Restriction to Temporary Work

Circumstances providing good cause for a restriction to temporary work include:

- Short-term layoff with a definite return to work date;
- Definite offer of work with a commitment to begin work in the near future; and
- Definite commitment, while unemployed, to move from the labor market.

Examples of circumstances **not** providing good cause for a restriction to temporary work would include:

- Students available for temporary work during vacation periods only;
- Claimants in the process of starting their own businesses; and
- Claimants on indefinite layoff.

The fact that a claimant may have good cause for restricting availability to temporary work does not necessarily mean that the claimant may refuse a referral to permanent work. A claimant may be expected to accept the referral and attempt to arrange the terms of employment so as not to interfere with the claimant's return to their regular employer or acceptance of other work. However, where the claimant is candid in informing the prospective employer of future plans, that fact alone will not be disqualifying **so long as the claimant is entitled to restrict employment to temporary work.**

> Example: In 76A-546, the claimant had a definite promise of employment for work as a service oiler in the immediate future. During the interim, she was looking for work as a waitress. When she informed prospective employers of the fact that she had already accepted other employment, she was not offered work. The Tribunal held that because the claimant's restrictions were due to employment arising in the immediate future, they did not render her unavailable for work.

A restriction to temporary work is acceptable only so long as there is an actual field of employment for such work and the claimant is willing to take it.

Example: In 76B-440, the claimant, a school bus driver with five years of experience, filed for benefits during the summer months when her regular employment was not available to her. The claimant had no history of work during the summer vacation. The claimant was registered only as a school bus driver, although she was aware that there were very few bus-driving jobs available during that period. She was unwilling to take other employment because she did not feel qualified to perform any other type of work without some training. She further stated she would not give up her bus-driving job to accept a permanent job lasting beyond the summer vacation. The claimant's restriction to temporary work was held to be unreasonable because there was no apparent field of employment for temporary work she was willing and qualified to perform.

B. Refusal to Consider Temporary Work

Temporary work is not in itself unsuitable, and a claimant will rarely show good cause for refusing to consider such work. However, if acceptance of temporary work would actually preclude the claimant's returning to permanent full-time work in the near future, the claimant may exclude it without penalty. Although such cases are rare, one example would be that of a union claimant at the top of the list in the hiring hall, with good work prospects, who would lose this position by acceptance of a "short call."

475 UNION RELATIONS

A. Registration with Union

A claimant, who has a history of work with a trade union or who normally obtains work through a trade union, must register with the union having jurisdiction over the claimant's principal occupation. If a claimant registers with a union through which the claimant has never worked or does not normally obtain work in the claimant's principal occupation through a union, this indicates that the claimant does not intend to seek work in this principal occupation. In this case the claimant's availability for work is questionable. See AA 510 WORK, NATURE OF for a discussion regarding a claimant's availability in relationship to the claimant's principal occupation.

A claimant must certify to normally obtaining work through a union. When the Division requires verification of the claimant's eligibility for dispatch with the union, the union must verify that the claimant is eligible for dispatch by the local chapter of the trade union. (See the UIPM for verification procedures.) Usually a claimant is eligible for dispatch by the local chapter of a union only if the claimant is a member in good standing. However, there are a variety of exceptions to this general rule, and the informal practices of the local chapter are often more important than the technical requirements. If the actual practices of the local chapter do not prevent a claimant from being dispatched, the claimant is eligible for dispatch through the trade union.

> Example: A member in arrears with the payment of dues may nevertheless be able to answer a work call and bring the dues up-to-date at that time.

In some cases, a claimant's failure to comply with the technical requirements of the trade union may result in loss of standing on the out-of-work list. Although this may raise an availability issue regarding the claimant's work prospects, there is no registration issue raised so long as the local chapter of the trade union can dispatch the claimant.

In addition to being registered with the trade union and eligible for dispatch by the local chapter, the claimant must make the customary effort to obtain work through the trade union. If the trade union's hiring hall agrees to contact the claimant by telephone or mail when the claimant's name reaches the top of the out-of-work list, then the hiring hall must be able to contact the claimant for the claimant to be available for work. If the hiring hall requires the claimant to report in-person to be eligible for dispatch, the claimant must do so when required to be available for work.

In some cases, a claimant's address may make it difficult for the claimant to respond to work calls on a regular basis. If the claimant has taken reasonable steps to conform to the requirements of the trade union, the claimant is available for work.

B. Working Permit

A local chapter of the trade union that has jurisdiction in the locality may issue a work permit to a claimant who is in an area not served by the claimant's local chapter of the trade union. In other cases, a local chapter of a trade union may dispatch a worker under a work permit prior to the worker's actual membership in the trade union. A work permit usually has the same effect as membership in the trade union because the worker has the same right to dispatch as other members. However, if evidence indicates that the claimant's actual right to dispatch is inferior to that of regular members of the trade union, this may unduly restrict the claimant's field of employment, and the claimant may not be available for work.

If the claimant cannot secure a work permit from the local chapter of the union, or if the local chapter of the union that granted the permit does not refer members in the claimant's specific occupation, the claimant must be available for nonunion work. The claimant's availability for work would depend upon the extent of the claimant's nonunion field of employment.

C. Hiring Controlled by Union

In cases where the trade union controls nearly all hiring in a claimant's occupation, and the claimant is unable or unwilling to join the trade union, the claimant must seek work in other occupations to remain available for work.

The fact that a claimant's prospective employment requires that the claimant join a trade union, other than a company union, does not make the work unsuitable under AS 23.20.385. Therefore, a claimant's refusal to join a bona fide trade union may result in a determination that the claimant is not available, depending on the extent of the claimant's field of employment and the claimant's willingness to accept other work. If a claimant has a compelling reason, such as a conscientious objection, for the refusal to join a trade union, then the claimant is available for work if there is a substantial nonunion field of employment in the claimant's principal occupation.

D. Availability for Nonunion Work

A claimant who registers with a union can restrict availability to union work for a reasonable period. However, a claimant is required to be available for nonunion work if:

- The claimant's trade union controls a small minority of positions in the claimant's principal occupations and field of employment;
- The length of the claimant's unemployment indicates that the claimant has poor work prospects through the union, and there exists suitable nonunion work in the claimant's field of employment; or

- The claimant loses the union membership for any reason, or the union cannot refer the claimant to a union occupation.

If a claimant's union penalizes the claimant for accepting nonunion work, then an adjudicator would consider this fact only if the penalty actually affects the claimant's prospect of work through the union in the future. If the penalty has no effect on the claimant's referral status, or if the claimant has no prospect of work through the union that a change in the claimant's referral status would jeopardize, then the claimant cannot restrict availability for union work indefinitely. In almost all cases, the union only penalizes a worker who accepts the same type of work with which the worker is registered with the union.

500 WAGES

A. General

A wish for a prior wage or a wage the claimant thinks is being paid in the labor market does not necessarily mean an unwillingness to accept the prevailing rate. The claimant's wage preference amounts to a restriction only when work would be unacceptable to the claimant in the absence of the preferred wage. **If the claimant is expressing a restriction, the claimant must be informed of the prevailing wage and given the opportunity to adjust, if adjustment is required.**

> Example: An administrator requested a starting wage that was greater than his previous one when filing a new claim for UI benefits. He was initially determined to be unavailable for work, two months later he adjusted the wage to meet the Agency's recommendation. The Tribunal held that he was available for work from the time that he offered the adjustment. (98 1503, August 5, 1998)

Before determining the effect of a wage restriction on the claimant's field of employment, a ruling of "good cause" for the restriction must be made. The claimant's financial need for the wage is irrelevant. The only factors relevant in deciding whether a wage restriction is acceptable are:

- the prevailing conditions in the labor market,
- the claimant's training, experience and earnings,
- the length of the claimant's unemployment, and
- the claimant's prospect of work at the desired wage.

(Note that the extended benefits program operates under different standards regarding the minimum acceptable wage. See MS 160 "Extended Benefits" for claimants in that program who express wage restrictions.)

B. Prevailing Wage

The claimant must accept the prevailing wage in the occupation and locality in which the claimant is seeking work, unless the claimant's personal circumstances justify requesting a higher wage.

C. Length of Unemployment and Work Prospects

Even where claimants' wage demands are justified by their former rate and skills, they must be considered in relation to the length of the claimants' unemployment and their prospects for work. It is a well-established principle that claimants must remove restrictions as to occupation and wage as unemployment lengthens, unless they have immediate prospects of returning to work.

If claimants are already willing to accept the prevailing wage in their occupation, no further wage modification may be required regardless of the length of their unemployment. Whether claimants are expected to seek work in other occupations depends upon their training and experience and the general state of the labor market.

1. Wage paid in the labor market

Claimants' work prospects are indicated by their length of unemployment and also by what is known about the wage paid in the labor market. If the wage the claimant is demanding is not paid in the labor market, the claimant may not impose that restriction even for a single week, regardless of the fact that the claimant may be qualified to demand that wage in a labor market where it is paid. If there are several employers who pay the wage the claimant is demanding, the claimant may be given a period of time to canvass them. If there are few employers who pay the wage the claimant asks, and many offering employment at the prevailing rate, the claimant will be given a shorter period of time to find work at the preferred rate.

> Example: A carpenter was last employed on a non-union job in the Kodiak area earning $10 per hour. During the first month of his unemployment, he was referred to two jobs paying $8 and $6 per hour respectively. The claimant refused those jobs because he was seeking work paying at least $10 per hour. The prevailing wage for nonunion carpenters in the Kodiak labor market area ranged between $7 and $8 per hour. In finding the claimant available for work, the Commissioner pointed out that the claimant had demonstrated that the wage he was seeking was paid in the nonunion labor market because he had very recently been employed at that wage. Further the Commissioner said, "I have consistently held that a claimant is allowed a reasonable period of time to seek work in his primary occupation which pays a wage commensurate with his previous salary. Since [the claimant] had been unemployed a period of approximately three weeks at the time he was disqualified, I hold that he was not placing unreasonable restrictions upon his availability." (78H-60, May 31, 1978)

If the claimant has moved from a high wage area to an area in which wages are less, the claimant cannot expect to earn as much in this labor market as in the former one, regardless of the claimant's training and experience. In these cases, the claimant's acceptable wage must be adjusted to reflect the amount the claimant can expect to earn in the new labor market. On the other hand, a claimant who has moved from a low wage area may reasonably expect to earn more in a new labor market where higher wages are paid.

2. Prior earnings

Claimants are never justified in demanding a wage greater than their former rate, as adjusted for labor market conditions or the prevailing rate, whichever is higher.

> Example: A claimant earned $10.91 per hour on her last job in computer graphics. When filing for UI benefits, she restricted herself to jobs paying $13 to $14 per hour. The Commissioner, in upholding the Tribunal's finding of unavailability, held that by so doing that she had limited her availability unreasonably. (98 0212 April 16, 1998)
>
> Example: A claimant who earned $10 per hour at a job moves to an area where the prevailing rate for that same work is $8 per hour. The claimant may demand no more than $8 per hour.
>
> Example: A claimant who earned $8 per hour at a job lives in, or moves to, an area where the prevailing rate for that same work is $10 per hour. The claimant may demand no more than $10 per hour.

However, see 3. below, for a discussion of cases where the claimant is seeking work in an occupation different from the prior one.

3. Prior training and experience

Claimants may demand a wage above the prevailing rate only if their employment background justifies it and they have reasonable prospects of securing the wage they desire.

The claimant's wage demand must be related to the claimant's principal occupation. This does not mean the wage earned in the claimant's last employment, if that employment was not in the claimant's primary occupation. If claimants are forced to seek work in occupations other than their principal one, their former rate is irrelevant and they must accept the prevailing wage for the occupation in which they are seeking work

> Example: A claimant had most recently been employed as a laborer and receptionist. However, the majority of her experience had been as a systems analyst and computer programmer. She was unwilling to accept the prevailing wage of $4.85 per hour as a receptionist. She had last worked at $4.25 per hour in Homer, but was currently living in the Anchorage labor market. The Commissioner held that the majority of the claimant's training and experience qualified her for work of higher skill than receptionist or laborer. The fact that she had been most recently employed at a lower classification and wage in another labor market area where job opportunities at her

higher skill and earning level were limited was not conclusive. The claimant was found available for work. (78H-270)

510 WORK, NATURE OF

A. General

A claimant does not need to be available for any work that the claimant can perform. The claimant must only be available for suitable work. 8 AAC 85.410(a) defines suitable work as work in the claimant's customary occupation or other occupations in which the claimant has experience and training. As the claimant's unemployment lengthens and work prospects become more limited, the definition of suitable work broadens to include more occupations for which the claimant has experience and training.

B. Is the Claimant Able and Willing to Work in the Claimant's Customary Occupation or in another occupation that the claimant has training and experience?

The regulation, 8AAC 85.410, specifies that the director shall determine that work in a claimant's customary occupation or work that is outside of the claimant's customary occupation for which the claimant has the training and experience, to be suitable under AS 23.20.385(b).

> Example: A pilot whose license had been suspended for six months, was willing to work as a construction laborer or carpenter's apprentice, in which he had 15 years' experience, the Tribunal held that he was available for work. (98 1586, July 28, 1998)

For a discussion regarding a worker's prior experience and training to perform other work, see SW 195.05 B, "Prior Experience or Training."

C. Is the Claimant Unwilling or Unable to Work in the Claimant's Customary Occupation?

If work in the claimant's customary occupation is available in the local labor market, and the claimant is unwilling to perform it, then the claimant has restricted availability for work in the local labor market. Unless the claimant has a compelling reason for this restriction, the claimant is not available for work.

> Example: A claimant's desire for higher wages or advancement, while commendable, is not a compelling reason.

> Example: A corrections officer quit his job to find work in the ministry. He was not willing to return to his former work as a corrections officer. The Tribunal held that he was, under the meaning of the law, unavailable for work. (99 0768, April 29, 1999)

However, if the claimant has a compelling reason such as health, which makes the claimant's customary occupation no longer suitable, then the claimant may be available for work, if there is a remaining field of employment for other occupations in which the claimant has experience and training.

Example: A customer service representative for an airline was no longer able to work in her former occupation because it required long periods of standing and heavy lifting that her physician had advised her she should not do. Since she was willing and able to do other work in her labor market in which she had training and experience, the Tribunal found her available for work. (97 1444, July 15, 1997)

515 WORKING CONDITIONS

Under 8 AAC 085.350 a claimant is required to be available only for suitable work that the claimant does not have good cause to refuse. Working conditions are as important as the type of work in determining suitability.

Under AS 23.20.385 work is not suitable if the wages, hours, or other conditions of the work are substantially less favorable than those prevailing. A claimant thus need not be available for work that offers substandard conditions.

Wages and hours are undoubtedly the two most important conditions of work and restrictions with respect to these conditions are often imposed at the time of filing of the initial claim. Restrictions as to distance are also important indicators of the claimant's availability, and are often imposed by the claimant before any offer of work is made. For a discussion of restrictions related to distance, refer to AA 150.05, "Area of Residence." For hours, see AA 450 TIME. For wages, see AA 500 WAGES.

Other conditions of work include the work environment, safety, sanitation, fellow employees, production requirements, seniority, and other factors that affect the physical conditions under which work is performed. These restrictions usually come to light only upon refusal of employment, and are discussed in detail under SW 515, Working Conditions.

Any condition that is prevailing in the occupation and locality is suitable. A claimant who cannot show good cause for rejecting a prevailing condition is ineligible, but only if the restriction actually affects the claimant's potential field of employment. The fact that the claimant has refused a particular job on the basis of some working condition makes the claimant unavailable only to the extent that it affects the claimant's work prospects.

> Example: The claimant may refuse to work at a particular establishment because of allegedly unsanitary conditions. If the conditions at the work site are prevailing, the claimant does not have good cause for refusal. However, it cannot be assumed that this objection necessarily extends to all employers in the labor market. If the objectionable employer is the major source of employment in the labor market, the claimant may be unavailable. However, if there are several employers offering work that the claimant is qualified to do, this refusal to work for only one of them may have no significant effect on the claimant's availability.