

### APPEAL TRIBUNAL DECISION

**Docket number:** 19 0777 **Hearing date:** August 30, 2019

**CLAIMANT: EMPLOYER:**

IDA VOLK ANGLERS LODGE LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Ida Volk Mark Burner

#### CASE HISTORY

The claimant timely appealed a July 11, 2019 determination which denied benefits under Alaska Statute 23.20.379. The issue before the Appeal Tribunal is whether the claimant voluntarily quit suitable work without good cause.

#### FINDINGS OF FACT

The claimant began work for the employer on June 1, 2019. She last worked on June 29, 2019. At that time, she worked full time as a housekeeper.

The claimant noted when making a bed that a guest had slept in that some small dark objects fell out of the blanket onto the sheets. The claimant thought they were dirt from the guest. About a week later, she noted similar small dark objects in the bedding. On her last day, while cleaning a third room, the claimant felt something bite her and she squashed an insect. She had three bite marks. The claimant did not bring the bite marks to the employer’s attention.

The claimant was off the next day. She read some material online and believed she had been bitten by a bed bug. The claimant read that bedbugs can be difficult to get rid of and the process can be expensive. The claimant paid an exterminator treat her home for bedbugs although she had seen no evidence that they were in her home.

The claimant called the employer’s manager and told her she would not be returning to work because she suspected the employer’s facility might have bedbugs. The manager told the claimant they would immediately have the facility checked. The owner believed it was unlikely that three rooms would have bedbugs, as the lodge had only been open about two weeks and had been frozen over the winter. The owner had the housekeeping staff, some of whom who had experience with bedbugs, check the facility thoroughly and they found no sign of bedbugs. No guests have complained of bedbugs.

#### PROVISIONS OF LAW

**AS 23.20.379 provides in part:**

(a) An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next five weeks of unemployment following that week if the insured worker...

1. left the insured worker's last suitable work voluntarily without good cause....

**8 AAC 85.095 provides in part:**

(c) To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under

AS 23.20.385, the department will consider only the following factors:

(1) leaving work due to a disability or illness of the claimant that makes it impossible for the claimant to perform the duties required by the work, if the claimant has no other reasonable alternative but to leave work;

(2) leaving work to care for an immediate family member who has a disability or illness;

(3) leaving work due to safety or other working conditions or an employment agreement related directly to the work, if the claimant has no other reasonable alternative but to leave work;

(4) leaving work to accompany or join a spouse at a change of location, if commuting from the new location to the claimant’s work is impractical; for purposes of this paragraph, the change of location must be as a result of the spouse’s

(A) discharge from military service; or

(B) employment;

(5) leaving unskilled work to attend a vocational training or retraining course approved by the director under AS 23.20.382, only if the claimant enters the course immediately upon separating from work;

(6) leaving work in order to protect the claimant or the claimant’s immediate family members from harassment or violence;

(7) leaving work to accept a bonafide offer of work that offers better wages, benefits, hours, or other working conditions; if the new work does not materialize, the reasons for the work not materializing must not be due to the fault of the worker;

(8) other factors listed in AS 23.20.385(b).

**AS 23.20.385(b) provides, in part:**

(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.

#### CONCLUSION

The claimant in this case voluntarily quit work because she suspected the facility might have bed bugs based on her observations and reading on the internet.

Regulation 8 AAC 85.095(c)(3) provides that a claimant may have good cause to leave work due to working conditions, if the claimant has no other reasonable alternative but to leave the work. The claimant in this case suspected bed bugs, but she did not confirm their presence or give the employer the opportunity to confirm or deny their presence. Bed bugs are a normal risk that workers in the hospitality industry face and a mere suspicion of their possible presence does not provide good cause to leave work.

In Missall, Com. Dec. 8924740, April 17, 1990, the Commissioner of Labor summarized Department policy regarding what constitutes good cause for voluntarily leaving work. The Commissioner held, in part:

*The basic definition of good cause is 'circumstances so compelling in nature as to leave the individual no reasonable alternative.' (Cite omitted.) A compelling circumstance is one 'such that the reasonable and prudent person would be justified in quitting his job under similar circumstances.' (Cite omitted). Therefore, the definition of good cause contains two elements; the reason for the quit must be compelling, and the worker must exhaust all reasonable alternatives before quitting.*

The claimant in this case did not establish that her reason for leaving the work was compelling. She did not pursue the reasonable alternative of waiting to see if the presence could be confirmed and if so, what would be done.

The Tribunal cannot conclude that the claimant had good cause for voluntarily leaving work. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on July 11, 2019 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending July 6, 2019 through August 10, 2019. The three weeks remain reduced from the claimant’s maximum benefits. The claimant may not be eligible for extended benefits under AS 23.20.406-409.

#### APPEAL RIGHTS

This decision is final unless an appeal is filed in writing to the Commissioner of Labor and Workforce Development **within 30 days** after the decision is mailed to each party. The appeal period may be extended only if the appeal is delayed for circumstances beyond the party’s control. A statement of rights and procedures is enclosed.

Dated and mailed on September 5, 2019.

 Rhonda Buness, Appeals Officer