

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 1205 **Hearing date:** September 10, 2020

**CLAIMANT: EMPLOYER:**

ADAM JONES BPS ENTERPRISES LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Adam Jones None

#### CASE HISTORY

The claimant timely appealed a July 29 2020 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 established a claim for unemployment insurance benefits effective June 9, 2020.

The claimant began work for the employer on in January or February 2020. He last worked in March 2020. At that time, he worked full time as a cook and deli clerk.

The claimant was laid off in March 2020 because the employer’s business was affected by the COVID-19 pandemic. The claimant was told he may be called back to work, but no return date was provided.

At the time his work ended, the claimant was living in a shelter in Anchorage. The shelter was closing and moving residents to another location. The claimant was not sure if there would be room for him at the new shelter location. A friend offered that the claimant could stay at their home in Wasilla, so the claimant relocated.

On April 23, 2020, the employer asked the claimant to return to work on April 27, 2020. The claimant did not have a vehicle to commute to Anchorage to work, and there is no public transportation that would get him to Anchorage for a 6:00 am shift. The claimant told the employer he would not return, as he had no transportation from his present residence. The claimant remains available for work in Wasilla, and there are employers within walking distance from his residence.

#### PROVISIONS OF LAW

**AS 23.20.379. Voluntary quit, discharge for misconduct, and refusal of work.**

1. An insured worker is disqualified for waiting-week credit or benefits for a week and the next five weeks of unemployment following that week if, for that week, the insured worker fails without good cause
2. to apply for available suitable work to which the insured worker was referred by the employment office; or
3. to accept suitable work when offered to the insured worker.

**AS 23.20.385. Suitable work.**

(a) Work may not be considered suitable and benefits may not be denied under a provision of this chapter to an otherwise eligible individual for refusing to accept new work under any of the following conditions:

http://www.legis.state.ak.us/sdimages/tab.gif(1) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

http://www.legis.state.ak.us/sdimages/tab.gif(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;

http://www.legis.state.ak.us/sdimages/tab.gif(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 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.

**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 was laid off due to a lack of work. The Tribunal finds the employment relationship was ended when the claimant was laid off due to business reasons of the employer, without a date to return to work, which is a non-disqualifying discharge.

The claimant refused an offer of work from the employer on April 23, 2020, so the Tribunal will consider if the claimant had good cause to refuse that work.

AS 23.20.385(b) holds that the Department will consider the distance of available work from the claimant’s residence when determining good cause for refusing work. The claimant in this case relocated while he was unemployed. Accepting an offer of housing was reasonable and prudent in the claimant’s situation with no date to return to work. Because the claimant depends on walking or public transportation to get to work, the work in Anchorage was no longer suitable for the claimant after his relocation to Wasilla.

AS 23.20.379 holds that penalties are appropriate if a claimant refuses an offer of suitable work. As the work was no longer suitable for the claimant, the penalty does not apply in this case.

#### DECISION

The determination issued on July 29, 2020 is **REVERSED.** Benefits are **ALLOWED** for the weeks ending May 2, 2020 through June 6, 2020, if otherwise eligible. The three weeks are restored to the claimant’s maximum benefits. The determination will not interfere with the claimant’s eligibility 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 16, 2020.

Rhonda Buness, Appeals Officer