****

**APPEAL TRIBUNAL DECISION**

**Docket Number:** 20 1751 **Hearing Date:** December 9, 2020

**CLAIMANT: EMPLOYER:**

JIMMY COFFIN JUST LAWNS LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Jimmy Coffin None

####  CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a July 9, 2020 determination that denied unemployment benefits under AS 23.20.379 on the ground that the claimant voluntary quit without good cause. The Division mailed the determination to the claimant’s address of record on July 10, 2020. The claimant filed an appeal on September 29, 2020, bringing forth the issue of timeliness of the appeal.

The claimant had applied for benefits in March. His separation was under investigation. He contacted the Division every thirty days while awaiting a determination. He found another job to be able to afford to house and feed his family. He remained in contact with the Division while employed. The separation from March was allowed in June.

The claimant determined that he had not received the full six from the separation in March. He contacted the Division several times concerning his missing benefits. He was told to wait that he would get the benefits later. He finally spoke to a supervisor who advised the claimant to file an appeal by email. He filed his appeal by email on September 29, 2020.

#### PROVISIONS OF LAW

**AS 23.20.340. Determination of claims.**

(e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant’s last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant shows that the application was delayed as a result of circumstances beyond the claimant’s control.

(f) If a determination of disqualification under AS 23.20.360, 23.20.362, 23.20.375, 23.20.378 ‑ 23.20.387, or 23.20.505 is made, the claimant shall be promptly notified of the determination and the reasons for it. The claimant and other interested parties as defined by regulations of the department may appeal the determination in the same manner prescribed in this chapter for appeals of initial determinations and redeterminations. Benefits may not be paid while a determination is being appealed for any week for which the determination of disqualification was made. However, if a decision on the appeal allows benefits to the claimant, those benefits must be paid promptly.

**8 AAC 85.151 provides in part;**

1. An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant’s last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. However, the 30-day period may be extended for a reasonable time if the claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

#### CONCLUSION

An appellant has the burden to establish some circumstance beyond the appellant’s control prevented the timely filing of the appeal.

*When a claimant approaches an unemployment insurance representative for instructions, it is the responsibility of that representative to provide complete and accurate information regarding the claimant’s request.* Murphy, Comm. Dec. No 87H-UI-283, September 29, 1987.

*We find no material errors in the Tribunal's findings. However, we have previously ruled in* Murphy, Comm. Decision 87H-UI-283, Sept. 29, 1987*, and other cases, that a claimant may rely on the instructions received from an authorized representative of the Employment Security Division. Such instructions may supersede instructions given in written form, such as claimant information handbooks or determinations depending on the circumstances.* Vassar, Comm. Dec. 96 0614, May 15, 1996.

The claimant maintained continuous contact with the Division during the appeal period. The Division failed to provide complete and accurate information to claimant regarding the claimant’s appeal.

Therefore, the Tribunal finds the claimant did attempt to file his appeal in the time limits prescribed under AS 23.20.340.

#### DECISION

The claimant’s appeal from the notice of determination issued on July 9, 2020 is **GRANTED**.

#### FINDINGS OF FACT

 (Separation)

The claimant began work for the employer on May 8, 2020. He last worked on

June 12, 2020. At that time, he worked full time as a laborer. The claimant established a claim for unemployment insurance benefits effective June 14, 2020.

The claimant was using his car to drive from site to site to help maintain social distancing rather than have three people in the cab of the work truck. After the third week he received his first pay check. He believed that he was not making sufficient money to drive his car to the worksites.

The claimant did not discuss this with the employer. He chose to quit work. He contacted the employer on June 15, 2020 and advised that he was quitting.

#### 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

*We have ruled in cases similar to this that even where a worker has an adequate reason for leaving work, the worker must attempt to remedy the situation before leaving in order to escape disqualification under AS 23.20.379. The worker must give the employer a chance to remedy his grievance. Larson, Comm. Dec. 9121530, Nov. 8, 1991, aff’d Larson v. Employment Security Division, Superior Court 3JD No. 3 KN-91-1065 civil, March 4, 1993.*

The claimant did not provide the employer an opportunity to remedy his grievance concerning his pay and using his own car. As in Larson, he has not shown good cause for leaving this work.

#### DECISION

The determination issued on July 9, 2020 is **AFFIRMED**. Benefits are denied for the weeks ending June 20, 2020 through July 25, 2020. The three weeks are 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 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 appeal rights and procedures is enclosed.

Dated and mailed on December 18, 2020.

 Tom Mize

 Appeals Officer