

### APPEAL TRIBUNAL DECISION

**\*\*CORRECTED\*\***

**Docket number:** 21 0896 **Hearing date:** November 8, 2021

November 30, 2021

**CLAIMANT:**

YELENA SKOBELEVA

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Yelena Skobeleva None

#### CASE HISTORY

The claimant timely appealed a May 10, 2021 determination which denied benefits under Alaska Statute 23.20.379. The issue before the Appeal Tribunal is whether the claimant refused suitable work.

#### FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective February 21, 2021.

On April 5, 2021, the claimant was called and was offered a job she had not applied for. Documents in the record indicate the employer got the claimant’s name and contact information from the claimant’s posted resume on the Division’s work registration website. The job was a janitorial position paying $12 per hour for 30 hours per week. The claimant was requested to bring her paperwork and meet the employer in a parking lot at a pharmacy which was to be one of the worksites the next morning.

When the claimant met the employer’s representative on April 6, 2021, she learned she was expected to travel with the employer’s male representative in his car to various job sites. The claimant was concerned because the representative did not have a business card, did not have any business signs on his car and he refused to provide the employer’s office address. The claimant and her husband, who was dropping her off, were concerned that it was not a legitimate job offer because the claimant had not applied for the job and had not filled out any paperwork before being expected to begin work. The claimant’s husband told her he was concerned for her safety if he left her with an unknown man in such circumstances. The claimant and her family have been victims of fraudulent actions since immigrating to the United States. The claimant decided not to accept the offer of work because she believed it was not a valid offer. The employer reported the claimant’s refusal of work to the Division.

#### 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:

(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 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 85.410. Suitable work.**

(a) The director shall 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.

(b) To determine if the wages, hours, or other conditions of work offered to a claimant are substantially less favorable to him than those prevailing for similar work in the locality, the following standards apply:

(1) similar work is work which is similar in the operations performed, the skill, ability and knowledge required, and the responsibilities involved. A judgment of similar work will not be based on job title, hours of work, wages, permanency of the work, unionization, employee benefits, or other conditions of work;

(2) the locality of the work offered to a claimant is the area surrounding the offered work and is comprised of those establishments which normally use the same labor supply for work similar to the offered work;

(3) the prevailing wages, hours, or other conditions of work are those under which the greatest number of workers are employed in similar work in the locality; however, if the greatest number of workers employed at the same rate is not at least one-third of the total employed, then the prevailing rate will be expressed as the weighted average of the total number of rates;

(4) a condition of work offered to a claimant is not substantially less favorable than that prevailing for similar work in the locality if the difference between the condition of the offered work and the prevailing condition is minor or technical, or would have no adverse effect on the claimant. Wages for work offered to a claimant are substantially less favorable than those prevailing if the offered rate is less than 90 percent of the prevailing rate.

**8 AAC 85.420. Refusal of suitable work.**

1. A claimant will be disqualified under AS 23.20.379(b) for refusing suitable work without good cause, or for a failure to apply for suitable work to which he was referred by the employment office, if the offer of work or referral to work was properly made. An offer of work or referral to work is properly made if

(1) a job opening exists at the time the offer is made or the referral given;

(2) the claimant understands that he is receiving an offer or referral, unless an offer of work is not made by the employer because of claimant actions which cause the employer to withhold an offer of employment;

(3) the claimant is given sufficient information concerning the conditions of the job, including duties, location of the work, hours of work, wages, working conditions, equipment needed, and union requirements, if any, to determine the suitability of the offer or referral; and

(4) the claimant, upon accepting a referral, is given adequate information concerning where and how he should apply.

(c) Refusal of an offer of work includes

(1) refusal of a job offer from an employer or from an agent of the employer having authority to hire;

(2) action by the claimant which causes the employer to withhold a job offer; or

(3) after acceptance of a job offer, a failure to report to work on the first scheduled day of work.

#### CONCLUSION

Alaska Statute 23.20.379 holds that a claimant who refuses an offer of work without good cause is subject to penalties.

The claimant in this case received an offer of work on April 6, 2021. She was advised of the hours, pay and locations for the work. The employer got the claimant’s name from the Division’s work registration website, which is intended to match unemployed workers with available jobs and is only accessible by employers vetted by the Division. The Tribunal concludes that the offer of work was a valid offer.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for leaving or refusing work. The claimant in this matter did not refuse the work for one of the allowable reasons. The regulation also directs the Department to consider the suitability of the work as laid out in AS 23.20.385(b). The claimant did not establish that janitorial work offered was not suitable to her. This leaves the Tribunal to consider other factors that would influence a reasonably prudent person in the claimant’s circumstances.

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 held she had good cause to refuse the work because the circumstances were unusual and she felt unsafe getting in a car alone with the employer’s male representative under the circumstances. The Tribunal agrees. The claimant was not told how the employer had received her name and contact information, she was not interviewed but simply offered a job if she showed up the next day. The claimant met the employer’s representative in a parking lot, and did not give the claimant the employer’s office address. The representative had no business card and was in an unmarked vehicle. The representative provided no forms for the claimant to sign and took no information from her before expecting her to begin work. In short, the employer’s representative offered no evidence to the claimant that he was a valid employer before expecting her to begin work. The claimant was wary, her family having recently been the victim of fraud, and her husband did not feel she would be safe leaving with the employer’s representative. The Tribunal finds the claimant’s decision to refuse the work to be a reasonable and prudent action in the circumstances.

The Tribunal concludes the claimant refused an offer of work with good cause. The penalties of 23.20.379 are not appropriate.

#### DECISION

The determination issued on May 10, 2021 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending April 10, 2021 through May 15, 2021, if the claimant is otherwise eligible.

#### 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 December 2, 2021.

Rhonda Buness, Appeals Officer