
### APPEAL TRIBUNAL DECISION

**Docket number:** 21 0998 **Hearing date:** November 19, 2021

**CLAIMANT:**

CHEYENNE GUARD

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Cheyenne Guard None

#### CASE HISTORY

The claimant timely appealed a May 26, 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 March 14, 2021.

On May 4, 2021, the claimant refused an offer of work from a local bus company. The work was start May 5, 2021 and the claimant would be paid $18.00 per hour as a passenger bus driver. The claimant would be required to get up at 3:30 am in order to report to work from 4:20 am until 7:20 am, and then return to work the remainder of a split shift from 2:40 pm to 6:15 pm.

The claimant refused the work because of the shift offered. The claimant is 68-years old and he has found that his mental and physical capacity have diminished in recent years and his mental acuity is greatly impacted by lack of sleep. While the claimant felt he could eventually adjust to the early start time, he felt that the split shift and resulting long work days would be too taxing and would make him unsafe as a driver of passengers in challenging local driving circumstances.

#### 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 claimant’s who refused an offer of suitable work without good cause are subject to penalties. Alaska Statute 23.20.385(b) holds that when considering good cause for refusing work, the Department will consider the claimant’s health, safety and physical fitness for the work.

The claimant considered that the work would be unsafe because of his age and the strenuous requirements of the work, including a work day that started at 4:25 am and ended at 6:15 pm.

The Division’s Benefit Policy Manual, at VL 5-2 holds:

*C. Suitable Work*

*There is no disqualification if a worker leaves unsuitable work. A worker needs good cause only to quit suitable work.*

*Suitable work is defined as work in the worker's usual occupation or an occupation for which the worker is reasonably fitted by training, experience, and physical condition.*

*If the worker has accepted the conditions of employment, by remaining on the job a significant period of time, and not attempting to change the objectionable circumstance, the work is suitable. However, in cases where the work is detrimental to the claimant’s health, even though the claimant is capable of performing a particular job, the work may be deemed unsuitable.*

The Tribunal finds the work offered the claimant was not suitable because it was a risk to his health and safety as well as the health and safety of his passengers and other drivers. Workers are not required to show good cause to leave work that is unsuitable. The penalties of AS 23.20.379 are not appropriate.

#### DECISION

The determination issued on May 26, 2021 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending May 8, 2021 through June 12, 2021, if the claimant is 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 November 29, 2021.

 Rhonda Buness, Appeals Officer