

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 2009 **Hearing date:** May 26, 2022

**CLAIMANT: EMPLOYER:**

STEPHANIE BRADY GENES INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Stephanie Brady None

####  CASE HISTORY AND FINDINGS OF FACT - TIMELINESS

The claimant filed an appeal against a September 10, 2020 determination that denied benefits under AS 23.20.379 on the grounds that the claimant voluntarily quit suitable work without good cause. The Division mailed the determination to the claimant’s address of record on September 11, 2020. The claimant’s appeal was filed on October 12, 2021, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant did not receive the determination. The claimant was in the midst of a divorce proceeding and her ex-husband forwarded the claimant’s mail without her knowledge. The claimant became aware of the Division’s determination on October 12, 2021 when a claim center representative advised her of the determination and her right to appeal it. The claimant filed her appeal that day.

#### PROVISIONS OF LAW - TIMELINESS

**AS 23.20.340 provides in part;**

 (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 - TIMELINESS

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

Once a notice has been properly mailed to an individual's last known address, the Department has discharged its "notice" obligation. The appellant's asserted failure to receive the notice does not establish cause for an extension of the appeal period. Andrews, Com. Dec. 76H-167, Oct. 8, 1976; aff'd Andrews v. State Dept. of Labor, No. 76-942 Civ. (Alaska Super. Ct. 1st J.D., April 13, 1977). There is a rebuttable presumption that a notice placed in the mail will be timely delivered. Rosser, Com. Dec. 83H-UI-145, June 15, 1983.

The claimant in this case has overcome the presumption that the Division’s determination was delivered to her. The claimant had no knowledge of and no control over her ex-spouse forwarding her mail, thus her delayed appeal was due to a circumstance beyond her control.

#### DECISION - TIMELINESS

The claimant’s appeal from the notice of determination issued on September 10, 2020 is **ACCEPTED** as timely filed.

#### CASE HISTORY - SEPARATION

The determination issued September 10, 2020 denied the claimant’s 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 – SEPARATION

The claimant attended an in-person meeting with the employer on April 28, 2020 after tentatively accepting a job as a salesperson over the phone. The claimant completed some paperwork and met with the employer’s management. The claimant was concerned that the managers seemed not to take the COVID-19 pandemic seriously and joked about the virus and said that sick employees were allowed to continue working. One person meeting with the claimant appeared to be ill.

The claimant was advised that an earlier statement that she would be paid a base wage of $20 per hour for the first six months was not correct and the claimant would be paid based on sales commissions only from the start. The claimant was in the employer’s office for up to 30 minutes that day and completed some paperwork. She decided that she could not accept the job after all because of the change in the previously agreed upon wage and because of the employer’s seeming disregard for COVID-19 precautions. The claimant’s young daughter has asthma and is at particular risk for complications from the COVID-19 virus. The claimant decided to leave and told the manager she would get back to them about the job but she did not intend to return.

The employer provided documents in response to a Division audit which showed the claimant worked 5.7 hours on April 28, 2020 and left for a meal break and did not return. The employer provided a copy of a check for $78.54 payable to the claimant for 5.7 hours of work at $15 per hour. The claimant denied that she ever received a check from the employer and denied that she was at the office for more than 30 minutes on that date. The claimant did not consider that she had ever worked for the employer.

#### PROVISIONS OF LAW - SEPARATION

**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 - SEPARATION

The first issue before the Tribunal is whether the claimant was employed. The claimant denied that she had worked for the employer. The Tribunal disagrees. The employer clearly intended to pay the claimant for her attendance at the office on April 28, 2020, and did pay her for her time on that date. That the claimant did not know she was being paid does not change that. The claimant apparently completed enough paperwork for the employer to have sufficient information to issue her a check, including her mailing address. The employer may have mailed the check to the claimant, however because the claimant was unknowingly having her mail forwarded at that time, she may not have received it. Because the claimant was paid for services, the Tribunal finds the claimant was briefly employed.

The claimant’s actions in leaving and not returning establish that she voluntarily quit the work, so the Tribunal will consider if the claimant had good cause to leave the work.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work, including leaving work due to an employment agreement, if the claimant has no reasonable alternative but to leave the work. The claimant in this matter left in part because she had agreed to accept work where she would be paid a base salary of $20 per hour for the first six months, and she was then told there would be no base salary and she would be paid based on her sales commissions only from the first day. The Tribunal finds the claimant had good cause to leave the work when she learned she would not receive the six months of base pay she had been promised and she was expected to start work for commissions alone.

The claimant also held that the workplace was unsuitable for her because of the employer’s disregard for COVID-19 precautions and her at-risk child at home.

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 claimant in this case left work not because of a possible detriment to her own health, but that of her child at home. The claimant’s concerns were reasonable in light of the COVID-19 pandemic guidelines. The claimant had an obligation keep her child safe. The Tribunal concludes the work was not suitable for the claimant at the time she left. The penalties of AS 23.20.379 are not appropriate.

#### DECISION - SEPARATION

The determination issued on September 10, 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 June 3, 2022.

 Rhonda Buness, Appeals Officer