



## APPEAL TRIBUNAL DECISION

**Docket number:** 23 0599    **Hearing date:** October 27, 2023

**CLAIMANT:**

TIMOTHY BRAND  
[REDACTED]

**EMPLOYER:**

INTEGRITY ELECTRIC INC  
[REDACTED]

**CLAIMANT APPEARANCES:**

Timothy Brand

**EMPLOYER APPEARANCES:**

Chuck Gibbons

### CASE HISTORY

The claimant timely appealed an August 11, 2023 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 began work for the employer on May 8, 2023. He last worked on July 28, 2023. At that time, he worked full-time as an apprentice residential electrician.

The claimant has construction experience and believed he would be physically able to perform the duties required, however he was unaware of how much he would be required to crawl and work on his knees in attic and crawlspace areas. There were times when the claimant was required to bear weight on his knees almost eight hours a day. The claimant experienced pain and found that his feet became numb after much time on his knees and sometimes stayed numb through the weekend while he was not working. The claimant asked the employer to accommodate his condition and the employer took steps to lessen the time the claimant was required to work on his knees, but could not eliminate the requirement to kneel, as the work an apprentice was expected to perform was often located in attics and crawlspaces.

The claimant has been previously diagnosed with arthritis and he believed that condition was affecting his ability to work on his knees. The claimant scheduled an appointment with his rheumatologist but did not consult him before leaving

the work, because it takes months to get an appointment and the claimant believed he might cause physical damage if he continued the work that long.

The claimant had some upcoming temporary schedule conflicts regarding his child care arrangements with school starting for his children. The claimant held that he would have worked around the child care issue and would not have left the work for that reason, but decided it was an opportune time to let the employer know he could not continue the work because of his physical problems with the duties required by the work. The claimant decided to seek other construction work instead of pursuing an electrical apprenticeship.

### **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**

The claimant in this case voluntarily left the work because working on his knees was causing pain and persistent extremity numbness. The employer was unable to eliminate all crawling or kneeling work from the claimant's duty requirements.

In *Wescott v. State of Alaska, Dept. of Labor*, Case No. S-08688, Op. No. 5241, February 18, 2000, the Alaska Supreme Court stated, in part:

[P]hysical ability does not necessarily establish work-suitability in the case of a worker with an existing health problem since -- according to the department's policy manual -- '[i]f accepting work is detrimental to the claimant's health, or if the claimant's health or physical condition prevent the claimant's performing the work, there is no issue under [the waiting-week disqualification] statute.' 'Suitability' is thus an inquiry that encompasses more than short-term physical capability. A claimant may be 'capable' of performing a particular job and yet be 'unsuited' for it. As

we stated in Lucas v. Anchorage Police and Fire Retirement Board, ‘although someone...is not suited for work...he [may] nonetheless [be] capable of performing it’.... To find suitability[,] the hearing officer was required to consider not only Wescott’s ‘physical fitness’ for the job, that is, whether he was capable of performing roustabout work, but also any detriment that the work might cause to Wescott’s undisputed physical impairment, club feet....

The claimant in this case, like Westcott, has a chronic condition that makes it difficult and painful to perform the work duties required by his employer. The claimant had a reasonable belief that he was causing damage to his body by continuing to do work that caused his feet to go numb and remain numb for long periods. Considering the claimant’s history of a chronic joint-affecting condition, the Tribunal finds the work was not suitable for the claimant.

AS 23.20.379 provides penalties for leaving suitable work. No penalties are appropriate when a claimant leaves unsuitable work.

### **DECISION**

The determination issued on August 11, 2023 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending July 29, 2023 through September 2, 2023, 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 October 31, 2023.



Rhonda Bunes, Appeals Officer