5 GENERAL

Law: AS 23.20.379(b)

1. Regulation: 8 AAC 85.420(a)

A. General

Note 1: The suitable work provisions for claimants receiving extended benefits are different from these. *See* MS 160.2 Suitable Work.

Note 2: Any issue raised under Suitable Work creates a possible issue of availability. Whether a claimant is allowed or denied under this issue is immaterial to that finding. **Always investigate the question of availability.**

Note 3: There is no issue if the claimant refuses or precludes the work during a week in which the claimant did not file for benefits.

Under 8 AAC 85.420(a), unemployment insurance benefits are denied if a claimant refuses work or fails to apply for work if:

- The claimant receives a proper referral to available work or a proper offer of available work;
- The available work is suitable; and
- The claimant refuses the referral to work or offer of work without good cause.

B. Definitions

1. Customary occupation

A claimant's customary or principal occupation is usually the occupation in which the claimant has earned the wage credits on which the claim is based. It is always an occupation in which the claimant has worked, whether or not it is currently available, or whether the claimant is now able to do it, or whether the claimant now has training to perform work at a higher skill level.

If the claimant has worked in two or more distinctly different occupations in the base period for the benefit year, the occupation in which the claimant has worked most recently or longest overall is the claimant's principal occupation. If there is a doubt as to the claimant's principal occupation, consider the customary occupation to be that of the higher skill level, if it is available in the area where the claimant is seeking work. If the claimant has worked generally in one occupation and plans to return to that

occupation, but has during the benefit year worked in another occupation, consider the customary occupation to be that in which the claimant has worked generally.

Example: A claimant has customarily worked for five years as a bulldozer operator. Due to a high-risk pregnancy, she worked through her benefit year as a telephone sales clerk. She is now able to return to her work as a bulldozer operator. Bulldozer operator is her principal occupation.

Example: A claimant worked for most of his benefit year as a barista while completing his training as a computer programmer. He then worked for eight months as a computer programmer. Because he had trained for the occupation and had worked as computer programmer, it can be considered his principal occupation.

2. Suitability of the work

a. Federal standards

Law: AS 23.20.385(a)

26 U.S.C. 3304(a)(5) requires states to incorporate three provisions regarding suitable work into their unemployment insurance laws. These provisions are found in AS 23.20.385. Work is unsuitable if it does not meet these three provisions.

1) The first provision prevents the denial of a claimant's unemployment insurance benefits because the claimant refuses work if the work offered is vacant due directly to a labor dispute. The intent of this provision is to preserve the neutrality of the agency in labor disputes.

2) The second provision prevents the denial of a claimant's unemployment insurance benefits if the wages, hours, or other conditions of the work are substantially less favorable than those prevailing for similar work in the locality. The intent of this provision is to prevent the unemployment insurance system from exerting downward pressure on existing work standards in the locality. As used in the statute, "hours" refers to all the time factors of offered work, including days of work, shifts, overtime, total weekly hours, and the like.

3) The third provision prevents the denial of a claimant's unemployment insurance benefits if there is a requirement that the claimant, as a condition of being employed, join a

company union or resign from or refrain from joining a bona fide labor organization. The intent of this provision is to protect the right of a worker to join unions and to deter company unions that do not protect the workers.

b. Conditions less favorable

Regulation: 8 AAC 85.410(b)

Work is considered unsuitable if the conditions of the offered work are less favorable than those prevailing for similar work within the local labor market.

3. Similarity of work

The similarity of work is based on:

- the duties and operations performed in the work;
- the skill, ability and knowledge required to perform the work; and
- the responsibilities involved in the work.

The similarity of work is not based on job title, hours of work, wages, permanency of the work, unionization, employee benefits, or other conditions of work.

The judgment of what is similar work is a common-sense test. In some occupations, the similarity of work cuts across industry lines, and the differences in the manner in which the worker performs the work are relatively minor.

Example: A bookkeeper in a timber industry performs in a similar capacity as a bookkeeper in the service industry. The skill, ability, and knowledge required to perform the work and the responsibilities involved in the work are similar. In other cases, there is considerable variation in the way that a worker performs work within the same occupation in various or even single industries.

4. Locality of work

Locality of work is the area of the immediate labor market for similar work, that is, the area in which the conditions of work offered by one business affect the conditions offered by another business because both draw upon the same labor supply.

5. Prevailing wages, hours, or other conditions of work

Prevailing means the rate paid, hours worked, or conditions of work that apply to the largest number of workers doing similar work in the locality. For a description of how to calculate the prevailing figures, *see* VL 500.45. E Prevailing Rate.

6. Condition of work not substantially less favorable

A condition of work is **not** substantially less favorable than prevailing work for similar work in the locality if:

- the difference between the condition of the work and the prevailing condition is minor or technical, or
- has no adverse effect on the worker.

Wages for work are substantially less favorable than the prevailing for similar work in the locality if the wages are less than 90% of the prevailing wage rate.

7. Good cause for refusal

A claimant may have good cause to refuse suitable work. Good cause means "a justifiable reason from the standpoint of a reasonable individual", or a cause "based on a necessitous or compelling reason."

The claimant's good faith is a necessary element to a finding of good cause. Good faith implies in this sense "actions or attitude consistent with a desire for prompt reemployment."

The distinction between suitability of work and good cause is not rigid. For example, work that is a grave risk to a claimant's health, safety, or morals is considered to be unsuitable work. However, a claimant who can show a valid conscientious objection to the work may also show good cause for refusing work that is not a risk to the morals of most workers. In addition, AS 23.20.385(b) specifies that a claimant's prior training and experience, prior earnings, work prospects, and the like must be considered in determining both suitability and good cause. Nevertheless, the two are separate concepts.

- **Suitability** is based on circumstances surrounding the job, and usually involves a comparison of the offered work with other similar work in the locality, or with the claimant's training, experience, prior earnings, work prospects, and other such factors.

- **Good cause** is based on personal circumstances surrounding the claimant at the time of the job offer, and not directly related to the conditions of the work.

  Example: A claimant who refuses work because it is outside the claimant's normal occupation is actually contending that the work is personally unsuitable. The concept of good cause correctly applies to the case of a claimant who fails to report for a job interview because of the need to care for a sick child.

8. Properly made referral

   To be properly made:

   - A referral must be to a job opening actually in existence at the time of the referral;

   For a complete discussion of this point, *see* SW 170.07 Availability of Job.

   - The referral must be made in such a way that the claimant knew that it was being offered;

   - The claimant must have been given sufficient information to determine the suitability of the job; and

   - Upon accepting the referral, the claimant was given sufficient information as to where and how to apply.

9. Week of unemployment

   A week of unemployment is a week in which a claimant performs no services and for which no wages are payable to the claimant, or a week of less than full-time work if the wages that are payable to the claimant are less than excess.

10. Good prospects

    A claimant has good prospects of returning to work if the claimant has a definite offer of suitable work or a definite recall from the claimant's former employer with a return to work date within 45 days. For a complete discussion, *see* SW 365 PROSPECT OF OTHER WORK.

11. Definition of Wages

    Law: AS 23.20.530(a)

C. Work Available, Offered, and Refused

1. Properly made referral or offer of work

If the referral or offer is not properly made, there is no issue if the claimant refuses to be referred to available work or to accept an offer of available work.

For a discussion of these points, *see* SW 170.1 Referral to Work or SW 330 OFFER OF WORK.

2. Failure to apply for work

Regulation: 8 AAC 85.420(b)

Failure to apply for work includes failure to report to the employment office after a call-in for a referral to work; refusal to accept a referral of work; or after acceptance of referral, a failure to apply to the employer for work.

3. Refusal of an offer of work

Regulation: 8 AAC 85.420(c)

A refusal of an offer of work includes refusal of a job offer from an employer or from an agent of an employer having authority to hire; action by the claimant which causes the employer to withhold a job offer; or after acceptance of a job offer, a failure to report to work on the first scheduled day of work.

D. Suitability of the Work

A claimant may refuse work that is not suitable without penalty.

Only if the claimant refuses suitable work without good cause is a claimant denied benefits under this statute. Good cause is based on circumstances surrounding the claimant at the time of the offer of work; there is no relationship to the conditions of work.

Law: AS 23.20.385 (b)

26 U.S.C. 3304(a)(5) requires states to incorporate these provisions into their unemployment insurance laws.

1. Degree of risk to a claimant's health, safety, or morals

   Under the statute, work is unsuitable if the work involves risks to a claimant's health and safety that are greater than those prevailing for similar work in the locality. It is also unsuitable if the performance of the work is directly contrary to the claimant's sincerely held religious or moral beliefs.

2. Distance of work from a claimant's residence

   Work that is unreasonably distant from a claimant's residence or outside the normal commuting radius in the locality is unsuitable.

3. Claimant's physical fitness

   Work is unsuitable if a claimant is unable to physically perform the work. Suitability also encompasses more than short-term physical ability. A claimant may be capable of performing a particular job and yet be unsuited for it due to an existing health problem or disability.

4. Length of unemployment

   Work outside the claimant's customary occupation that the claimant has the training and experience to perform is suitable regardless of length of unemployment.

5. Claimant's prior training and experience, prior earnings, and prospects for obtaining local work at the claimant's highest skill.

   Work that is outside a claimant's highest skill level may be unsuitable, depending upon the prevailing conditions of work, and the availability of the claimant's customary work or work for which the claimant has training or experience.

E. Claimant Available to Begin Work

A claimant must be able to begin work when requested by the employer. If not, the claimant is subject to disqualification unless there are compelling reasons for being unavailable. In all such cases, an AA issue is raised which must be resolved.

In occupations where it is customary to begin work immediately, the claimant must be able to do so, unless there are compelling reasons such as illness or disability. However, where it is customary in the occupation to begin work one or more days after the date of hire, a claimant may establish good cause for being unready to work immediately, unless the refusal to commence work immediately

was merely a matter of personal preference or convenience, or the claimant had been specifically told by the employment service or the employer to be ready to begin work immediately upon hire.

40 ATTENDANCE AT SCHOOL OR TRAINING COURSE

A. General

With the exceptions noted below, a refusal of otherwise suitable work because of actual or prospective attendance at school is not good cause. **In addition, the availability of a claimant who refuses work due to school attendance is always questionable, regardless of whether the refusal itself is with or without good cause.** (*See* AA 40.)

B. Exceptions Providing Good Cause for Refusal

1. Vocational training waiver

Claimants who have been given a waiver for vocational training approved by the Director under AS 23.20.382 and 8 AAC 85.200 may refuse any work during the period for which the waiver is in effect without affecting their benefits,

2. Attendance at school required by law

If the offered work requires **unlawful** absence from school, the claimant has good cause for refusing such work. These cases usually involve claimants who are minors, and who are legally required to attend school until they have reached a specific grade or a specific age. Distinguish between school attendance that is required for certification in a particular trade or occupation, and school attendance that is compelled by law regardless of any other consideration. The claimant who attends school to obtain a license or certification does so at the claimant's own choice -- the claimant is not legally compelled to do so.

In order to establish that the claimant is in fact legally unable to accept the job, it is necessary to consider whether the hours of attendance can be changed, or whether correspondence courses may be used to satisfy the requirement. In addition, a claimant may very well be found unavailable, even where good cause is established for the refusal, if no substantial field of employment remains because of the school attendance.

3. Continued school attendance improves work prospects

Where the claimant's continued attendance at a school or training course directly and substantially improves immediate prospects for work, the claimant may establish good cause for refusing otherwise suitable work. There is good cause based on such school attendance only if:

- only a brief period of training remains at the time of the refusal of work; and

- acceptance of the offered work requires the abandonment, rather than a mere postponement, of the training; and

- by continuing school attendance for a brief period, the claimant will secure good prospects of permanent employment at a higher skill level or rate of pay than that of the job offered.

90 CONSCIENTIOUS OR LEGAL OBJECTION

A. General

Employment that is a grave risk to a claimant's morals is not suitable work. In addition, a claimant may establish good cause for failure to apply for or accept otherwise suitable work, based on a conscientious objection to the prospective work, if:

- the conscientious objection is genuine, and
- the prospective work directly conflicts with the claimant's conscientious objection.

B. Genuineness

A conscientious objection may be based either on religious grounds or on moral, ethical, or philosophical grounds. Regardless of the basis for the objection, the claimant must meet the same requirements of genuineness and directness. In cases where the conscientious objection is mingled with other objections, the question is whether the conscientious objection alone is a compelling reason for refusing the prospective work. If it does not, the refusal is not based on a conscientious objection.

Distinguish between personal preference and conscientious objection.

> Example: Refusal of work in a gambling casino because the worker's spouse prefers that the worker not associate with the gambling crowd is not a conscientious objection.

C. Direct Conflict with Conscientious Objection

It is the claimant's responsibility to make certain that the prospective work actually conflicts with the claimant's convictions. In addition, the conflict must be direct.

D. Religious Objections

An objection based on religious grounds usually is because the claimant's religious beliefs prohibit work under certain conditions. The objectionable conditions may include specific hours or days of work.

The religious belief may be either that of a particular denomination or a personal belief of the individual. (U.S. Supreme Court, in Frazee v. Illinois Department of Employment Security, et al.) However, the court, in Thomas v. Review Board, 450 V.S. 707, 715 (1981), did note that "[A]n asserted belief might be 'so bizarre, so clearly non-religious in motivation, as not to be entitled to protection under the Free Exercise Clause."

E. Moral Objections

The genuineness of a conscientious objection based on ethical, moral, philosophical, or humanitarian considerations is difficult to gauge, since there is usually no organization with which to verify the claimant's beliefs or convictions.

- If the objection is a common one, such as an objection to liquor, does the claimant support any organizations advocating the principles on which the objection is based?

- Are the claimant's beliefs consistent? For example, does the claimant object to selling liquor, but not to making it?

- Does the objection conform to the concept of good cause? (*See* VL 210 Good Cause.)

Although sincerely held moral or ethical beliefs are protected by the same constitutional guarantees that apply to the practice of religion, reasons for refusal that are arbitrary, whimsical or frivolous, or that have been adopted for the purpose of avoiding work does not satisfy the requirements of good cause. Also excluded are beliefs that cannot be accepted as reasonable by at least an appreciable segment of society, or beliefs contradicting accepted moral or legal standards.

Example: An objection to working with members of a certain race is not good cause for refusal of work.

Example: In B. H. A. Roderick v. Employment Security Division (Alaska Department of Labor, Sup. Ct. 1st J.D., No. 77-782, Alaska 1978) the Superior Court, affirmed by the Alaska Supreme Court, held that Roderick's reason for leaving work reason "was not such as would impel an average able-bodied worker to give up the specific employment . . . . The circumstances of working in a system having the economic purposes (and the end results of profit distribution) as appellant believed existed for his job, were not so abnormal as to constitute good cause for an average, reasonable person to leave the work." As it relates to the concept of good cause, it is applicable in suitable work cases as well.

However, an offer of work on terms that are not a clear risk to the morals of most people may still be good cause for refusal, if the claimant has a valid conscientious objection to the type of employment or work in the particular establishment.

F. Risk to Morals

Prospective work may be considered unsuitable, or be refused with good cause, if acceptance of the work causes a definite risk to the claimant's morals. It need

not be shown conclusively that acceptance of the work involves the claimant in actual physical or moral harm, but the fear of risk must be well-founded.

Certain occupations or work at certain places of business may be considered as a threat to a claimant's morals regardless of age, sex or personal history.

> Example: Employment in a nightclub that is frequently the scene of violation of gambling laws may properly be considered a threat to the morals of the worker.

Usually, however, the degree of risk to a claimant's morals varies with the circumstances of the employment and the claimant's own circumstances. In most cases, the degree of risk to a particular claimant's morals can be determined by:

- The nature of the work;
- The conditions of the particular employment; and
- The claimant's work history and personal characteristics.

G. Legal Objections

Any employment that a worker is legally prohibited from doing is unsuitable work for that person.

150 DISTANCE TO WORK

150.05 Area of Residence

A. General

Work may require the claimant to commute on a daily basis, or the work may require that the claimant live at the job site and return home at intervals. The customs of the labor market, the previous work experience of the claimant, and the claimant's prospects of employment are all factors that affect a determination of suitability.

In no case is work suitable if it requires the claimant to relocate --- that is, to permanently move to a new location --- unless the claimant was already committed to the move.

B. Work Requiring that the Claimant Live at the Job Site

1. General

A claimant who has earned wage credits in work requiring the worker to live at the job site does not have good cause for that reason alone to refuse work with a similar requirement. There may, of course, have been a change in the claimant's circumstances that warrants a finding of unsuitability of the work.

> Example: A claimant (97 1519, July 22, 1997) refused an offered job that required him to live away from home, as his family would then be forced to maintain their remote site home without his help. Since he had done this type of work in the past, the Tribunal held that he did not have good cause to refuse suitable work.

A requirement that a worker commute to the place where the work is done does **not** make the prospective work unsuitable provided:

- the requirement is a customary practice in the occupation;
- the distance that the claimant is required to travel is customary; and
- commuting to the area of the work will not require the establishment of a new household.

Claimants in some occupations may customarily have a single residence while traveling extensively to work, living temporarily at the job site. A claimant in these circumstances cannot reasonably contend that offered work is unsuitable based on distance alone, if the job satisfies the three conditions above.

2. Home or spouse in another locality

Because the State has an interest in the preservation of marriage, the Employment Security Act is not administered to force married persons to permanently maintain separate households. For the purposes of this category, persons who intend to marry in the near future are treated the same as are those already married.

3. Cost of transportation

A worker who cannot afford the up-front cost of travel to a remote site may have good cause to refuse the job, even if the employer will later repay these costs. Of course the worker must make reasonable efforts to fund this transportation, depending upon the length of the job and prospective earnings.

C. Factors in Daily Travel to the Job Site

1. General

Work that is an unreasonable distance from a claimant's residence is unsuitable. Distance is not measured merely in terms of miles. The travel-time, the expense balanced against the anticipated wages, and mode of travel are also factors to be considered.

In adjudicating refusals of work because of distance, three questions must be answered:

- Where is the claimant's residence?
- What are the usual commuting patterns for the occupation in the locality?
- What would give the claimant good cause to deviate from the customary pattern?

2. Claimant's residence

a. A claimant who relocates must follow the usual commuting and travel patterns in the claimant's occupation in the new locality unless the claimant can show good cause for not doing so. The claimant's past patterns, based on a previous residence, are irrelevant.

b. A claimant who is in transit and has no fixed residence is bound by the usual patterns in the claimant's occupation in the area in which the claimant is looking for work

c. A claimant who has more than one residence is considered as living at the place where the claimant has permanent home.

3. Reasonable distance

A reasonable distance is the customary distance traveled by the majority of other workers in the same occupation in the locality of the claimant's residence. A claimant is expected to accept otherwise suitable work within the customary commuting or travel patterns for the claimant's occupation and locality, unless the claimant can show good cause for deviating from that pattern.

The locality of the claimant's residence and the customs of the claimant's occupation must be considered together. Customary distances are usually greater in larger cities and in rural areas than they are in smaller towns, and are greater in some occupations than in others.

The labor market area of an occupation and the distance that workers customarily travel in that occupation are unrelated and do not necessarily cover the same geographical area. The **labor market area** is the area in which competing businesses draw upon the same supply of labor. (See AA 5. A. 4 Labor Market Area for a detailed discussion of labor market area.) **Customary travel distances** are established by practices in the area of the claimant's residence.

Example: The labor market area for certain construction trades may cover several states, but workers in certain areas of those states may customarily travel only a fraction of that distance from their residences to work.

Reasonable distance is not based on an arbitrary area surrounding the local office, such as a 55-mile radius.

4. Deviation from customary pattern

There is good cause for failure to accept work requiring the usual commuting time and distance only if the claimant's reason for refusal is based on compelling personal circumstances.

If commuting times, routes, or distance of prospective work definitely causes a risk to a claimant's health, safety, or morals, there is good cause for refusing such work. Mere cost or inconvenience is not usually good cause.

In some cases, due to the length of a claimant's unemployment and poor prospects for work, a claimant may be expected to accept work within a

somewhat larger area than is customary for the occupation and locality. On the other hand, a claimant who has been unemployed for only a short time, with good work prospects, may properly refuse to commute a distance that would be considered reasonable later in the claimant's unemployment.

Example: In 77H-216, a claimant refused a job 28 miles from her home after three weeks of unemployment. In allowing benefits, the Commissioner held, "The fact that a particular job is within one's labor market area and pays prevailing wages for the particular occupation is not conclusive . . . The consideration of such factors as distance, other work prospects, length of unemployment, etc., is mandated under AS 23.20.385."

5. Transportation

The conditions affecting the transportation and travel of the worker to and from offered work are a part of the consideration of the distance of the work from the claimant's residence.

If there is no transportation or if the facilities for transportation to and from work are such that the claimant cannot reasonably be expected to use them, there is good cause for refusing offered work. Mere inconvenience, or dislike or reluctance to use available transportation is not good cause.

a. Lack of transportation

A claimant who cannot obtain adequate transportation has good cause to refuse the offered work.

It is the claimant's responsibility to make a reasonable effort to examine possible alternatives:

- In the absence of public transportation, the claimant is required to make a reasonable effort to arrange private transportation.

- If the claimant's own transportation is disabled, the claimant is expected to use public transportation, if available, or show attempt to repair the claimant's transportation. However, if the expense of repairing the transportation is beyond the claimant's means or is unreasonable in view of the wages to be expected from the prospective job, and no other transportation is available, then there is good cause for refusing the work.

An A&A issue is always raised by such circumstances.

Example: In A-3074, the claimant was disqualified for refusing waitress work during the hours from 7 p.m. to 3 a.m. Public transportation was unavailable after 6 p.m. and she would have to rely on taxi service, which she felt was too costly. The Tribunal held that the claimant did not pursue reasonable alternatives such as arranging transportation with co-workers or even discussing the job with the prospective employer. It was further determined that the taxi fare from work to her home was not so excessive that good cause existed for refusing the referral.

Example: In AW-762, a claimant refused a job some nine miles distance from her home with good cause, due to lack of transportation. She lived in an area not serviced by public transportation and her husband used the family car for his own transportation. However, the claimant was found not available for work due to the lack of transportation.

b. Expense of travel

The cost of transportation is not usually good cause unless it is more than customary costs for other workers in the claimant's occupation and locality. However, in some cases, especially involving part-time work or split shifts, the expense of travel, even though customary, is so excessive, as measured against the wages of the offered work, as to make the distance unreasonable. In addition, expensive travel, such as taxi service, may transform an otherwise reasonable commuting distance into an unreasonable one. In all cases, customary practice, actual mileage, and potential wages are the primary considerations. Cost cannot be considered a factor where the employer pays travel time or other compensation for travel.

Example: In 75A-459, a claimant refused a referral to a cannery job because she felt the distance, approximately 25 miles one way, was too far to drive for the wage offered. The job site was within the claimant's labor market area and the majority of the cannery work available in the area is located there. The claimant's contention that the commuting distance was too far for the wage offered was rejected by the Tribunal, because the commuting pattern in this instance was a customary one.

c. Time of travel

Time of travel, like cost, is dependent upon both actual mileage and type of transportation. The total time, including waiting time, for the claimant to travel to work is considered as the travel time.

> Example: A claimant who walks to a bus stop, and from a bus stop to the place of employment, and then must wait a half-hour before the shift begins, uses more travel time than the person who can drive directly to a job by car. In other situations, a split-shift, which implies that the claimant will return home in the middle of the double shift, may make a travel distance unreasonable that would have been reasonable for a single shift.

However, where the travel time is customary for the occupation and area, travel time alone does not establish good cause, unless the claimant can show exceptional personal circumstances.

> Example: In 77B-4, the Tribunal rejected the claimant's argument that a customary travel time of one-half hour, or slightly longer, across Anchorage to a bookkeeping job was excessive.

> Example: In A-5053, the claimant refused to commute a round trip distance of approximately 45 miles. The claimant was held disqualified, because the commuting distance was a customary practice for workers in that labor market.

150.15 Relocation

A. Relocation of Claimant

In any case where the claimant relocates, the question of the claimant's availability must be considered, regardless of the decision on the issue of suitable work.

1. Already moved

A claimant may refuse any prospective work that is totally removed from the normal commuting or travel distance for the claimant's occupation and locality.

Example: In 76A-928 a claimant was found eligible when he refused work in Alaska shortly after moving his household to California.

2. Committed to move

A claimant who has not already moved from the locality at the time of the job offer, but who is intending to move, has good cause to refuse work in the claimant's present locality if the claimant has made a definite commitment to the move, such as:

- a commitment to sell or buy a home,
- moving arrangements,
- the spouse having found work in the new locality,
- the spouse having been, or being about to be, transferred or discharged from the military, or transferred by an employer to a new locality.

3. Not committed to move

If the claimant has not made a definite commitment to the move, consider the length of the claimant's unemployment, the claimant's job prospects elsewhere, and any compelling circumstances surrounding the decision to move rather than accept suitable work. In most cases where a definite commitment to move has not been made, the claimant does not have good cause for refusal.

4. Accompanying spouse

If the claimant refuses work in the claimant's present locality because the claimant wants to accompany the spouse to another locality, consider the

necessity or reasonableness of doing so rather than accepting suitable work.

A refusal based merely on the disapproval of a spouse, or on the desire of husband and wife to relocate, without definite job prospects in the new area, does not alone give good cause for refusal.

B. Employer Requirements

If the job requires the claimant to establish a new, permanent household in the area of the job, it is not suitable --- unless, of course, the claimant has solicited the job by traveling to the area in search of work.

Example: In A-1803, a claimant was determined eligible when he refused a job in an area some 200 miles from his home. He had established a permanent residence, and acceptance of the job would have required that he have two homes, or sell his home and move to the new area.

C. Relocation of Employer's Business

The removal of the employer's place of business to a place that causes a substantial change in commuting patterns represents an offer of new work for all employees affected by the change (See VL 315 Voluntary Leaving vs. Refusal of New Work.) Work under the changed conditions is suitable unless the commuting distance is outside the normal commuting or travel distance.

155 DOMESTIC CIRCUMSTANCES

155.05 General

A. General

Domestic circumstances are good cause for refusing suitable work if:

- they are substantial,
- they are compelling, that is, they impose legal or moral obligations, and
- the claimant has no reasonable alternative except to refuse the prospective employment.

While domestic circumstances usually impose obligations only upon members of the immediate family, for the purposes of this category, kinship is established when any guardian, whether legally appointed or not, or any relative such as a grandparent, aunt, or older sister has the responsibility of parent.

B. Substantial Domestic Circumstances

Not all domestic obligations are good cause for refusing work. Personal preference, or the preference of a family member are not usually good cause.

> Example: A wife's desire to fix supper for her family, or a father's interest in spending time with his children, while commendable, are not good cause to refuse work.

Nor is a refusal because of the objections raised by a spouse sufficient as a reason for refusal. However, if acceptance of the job produces an intolerable domestic situation, such as divorce or separation, there may be good cause. In addition, an un-emancipated minor may be expected to follow the parents' wishes.

C. Compelling Circumstances

Domestic circumstances are compelling only if they impose a moral or legal obligation.

> Example: The obligation of parents to care for their children, the obligation of children to care for aged parents, the moral obligation to attend the funeral of a member of the immediate family, the obligation to give bedside care for a seriously ill member of the immediate family, or the obligation to change residence to protect the endangered health of a member of the immediate family may be compelling.

An obligation to a friend, as opposed to a member of the immediate family, is seldom a compelling circumstance.

D. Alternatives

The fact that a domestic circumstance is substantial and compelling is not automatically good cause. Is there a reasonable alternative other than the claimant's attending to the matter in person? A domestic circumstance is good cause for refusal only if no such alternatives were available.

The claimant is not required to make use of any alternative, only reasonable ones.

> Example: A claimant might hire a nurse to care for a seriously ill child, but it is in most cases unreasonable to expect this, in view of the expense of professional care in relation to the wages to be earned from the prospective job.

155.1 Care of Children or Others

For a discussion of care of ill children or other persons, *see* SW 155.35 Illness or Death of Others.

A. General

For there to be good cause for a refusal of work because of the inability to secure care for a child or aged or disabled parent, it must be shown that:

- the claimant actually had responsibility for care of the person, and
- all reasonable attempts to secure care had been made.

The obligation to care for children is affected by the child's age, health and character. A delinquent child may need more care than would otherwise be required. A teenage child may not require daytime care, but care in evening hours may be critical. If the hours of offered work cover only the period when the claimant's children are in school, there is not good cause for refusal. In all cases, past practices of the parent verify or invalidate the need for the claimant's presence in the home.

A person also has a moral obligation to care for an aged or disabled parent.

The cost of care in relation to offered employment may also be considered.

B. Obligation

In most cases, only the parent or legal guardian may claim the obligation of childcare as a reason for refusal of work. Conversely, only the child may claim the obligation to provide care for the aged or disabled parent, although this may be extended to a person who served as a parent for a significant portion of the adult's childhood. Other relatives or friends cannot usually make such a claim unless there is no other person able to give the care.

When the age, health, or other circumstances of the child dictate that personal care is necessary, and when no other person is able to give the care, then a parent's recognized obligation establishes good cause for refusal of work.

> Example: In Arndt v. State of Alaska Department of Labor (583 P. 2nd 799 Alaska 1978), the claimant had refused a night-time janitorial job because she had been directed by the Welfare Department to give night-time care to her small school-age child and was unable to get the required care by other means. The Alaska Supreme Court cited a California Supreme Court decision, Sanchez v. Unemployment Insurance Appeals Board, 569 P. 2nd 740 (Cal. 1977):

The responsibilities our laws place on parents and the importance to their children and society that those duties be discharged, mandate that the good cause concept not be defined so narrowly as to compel unemployed parents who remain available to a significant labor market to fulfill their parental responsibilities only upon pain of losing their unemployment benefits.

We conclude that a claimant who is parent or guardian of a minor has good cause for refusing employment which conflicts with parental activities reasonably necessary for the care or education of the minor if there exists no reasonable alternative means of discharging those responsibilities. Indeed it is difficult to imagine a better cause for rejection of employment.

C. Attempts to Secure Care

Even when there is a real and compelling obligation to give care, and that obligation rests on the claimant, the claimant must still make all reasonable attempts to do it other than in person. When the claimant has made a reasonable attempt to get care but is not able to do so, there is good cause for refusal of work.

> Example: A claimant (98 1721, September 29, 1998) refused a job interview because she did not think that she could arrange child care for her twin children by the time the job was to start, which was a month later. In denying benefits, the Tribunal held that she had not attempted to make arrangements before declining the interview.

Examine first if it is reasonable to expect the claimant to get alternative care rather than give the care in person. In some cases, although it may be possible to find alternative care, it is not reasonable to expect the claimant to use it.

> Example: A seriously ill small child usually needs both close supervisory care and the emotional support that only a parent can give. There are other situations where this principle applies, and such situations must be judged on an individual basis.

Where it is reasonable, the claimant is expected to make care arrangements through friends, relatives, day care centers, or babysitting services. Since a person interested in reemployment will have made some arrangements for care in order to be able to accept work when offered, a person who has not done so raises a question of availability.

The cost of care almost never establishes good cause for failure or refusal to make care arrangements. However, there are exceptions if:

- the care must be very lengthy in relation to the wages expected from the job, such as split-shift jobs, or

- the type of care, such as professional nursing care, is unreasonably expensive, or

- when the cost of care, added to other costs, such as travel, makes the total costs disproportionate to the wage.

Scheduling of care may in some cases be good cause for refusal.

> Example: In 76B-815, a claimant refused a job as an on-call police dispatcher, because she would be required to be on a two-hour call during a 12-hour shift and she could not arrange babysitting services with no more than two hours' notice. The claimant was found eligible in this case, in part because of the shortness of notice and resultant babysitter problems.

155.25 Household Duties

As a general rule, household duties or emergencies are seldom good cause for refusing prospective employment. Usually household duties may be delegated to another family member. The fact that a claimant wants to do shopping, fix a spouse's meal at a particular time, or pick up children at school does not establish compelling circumstances. Also, emergencies are usually short enough that another person may be hired to handle them. When claimants state they refused work because of household duties or emergencies, there is a strong probability that other factors are involved which affect their overall availability.

However, where the household duties are compelling and no other family member is able to discharge them, or where the emergency situation is substantial, and no other person may be delegated to cope with it, there may be good cause. Nevertheless, a claimant is expected to contact the employer or employment office to request postponement of the interview or starting date, except in extreme emergencies.

155.3 Housing

A claimant may establish good cause for refusing work due to housing difficulties if:

- Housing is nonexistent in the area of the job, or is so primitive as to be a menace to the health of the claimant or the claimant's family;

- The cost of available housing is so excessive, in relation to the expected wage, that it is not reasonable to expect the claimant to be self-supporting on the wage offered;

- The housing fails to meet applicable standards set by state or federal law; or

- The available housing would not allow a claimant, who customarily lives with the family while working, to live with the family.

See SW 150.15 Relocation for a discussion of other relevant factors.

155.35 Illness or Death of Others

A. Illness

The illness of others is good cause for refusing work if:

1. The illness required the claimant's presence; and

   The personal presence of a claimant is seldom required, except in the case of a young child, a mental or other severe problem or condition, or the critical illness of a close relative. The illness of anyone not a close relative of the claimant is usually not good cause for refusal of work

2. There was no alternative but to refuse the job in order to meet the obligation.

B. Death

The death of others is good cause for refusal if:

1. Attendance at the funeral or the making of necessary arrangements was a real and compelling obligation; or

   Usually, only where the deceased is a member of the immediate family, is there a real and compelling obligation.

2. The obligation to attend the funeral or make arrangements actually prohibited acceptance of the job.

   In most cases, a claimant is expected to postpone the employment interview, although the mental state of a claimant in grief or shock may be allowed consideration.

165 EMPLOYER REQUIREMENTS

A. General

In some cases, a claimant may be unable to meet the specific requirements of a job. The work is not suitable if:

- The requirements are so specific and unalterable that adjustment is impossible, and
- The claimant has made a reasonable effort to meet the job requirements.

Example: In 77B-995, the claimant refused work as a substitute teacher in part because he did not have a phone so that he could be contacted by the employer, which he stated was a requirement of the job. In denying benefits to this claimant, the Tribunal held, in substance, that the claimant had not made a reasonable effort to adjust the job requirements, such as contacting the employer each day for job assignments rather than relying on phone contact from the employer, nor had he made a reasonable effort to meet the job requirements, such as having a phone installed.

If the claimant refuses the prospective employment because of an unwillingness to meet the requirement, the claimant must have good cause for the refusal.

Example: A government agency's requirement that prospective employees submit information for a security check does not make the employment unsuitable.

B. Citizenship or Residence Requirements

If employer or legal requirements relating to citizenship or residence prevent the worker from taking the job, the work is not suitable. Determine that the requirement is real, rather than an assumption on the part of the claimant, and that the claimant actually fails to meet the requirement.

C. License or Permit

Some occupations require that employees have a license or permit, or obtain a security clearance, in order to perform the work.

If a claimant cannot get a license, permit, or security clearance, the work is unsuitable.

Example: A claimant who has had a license revoked for a specific period of time, and that time has not elapsed, knows that the claimant cannot obtain a license, and thus the work is unsuitable.

On the other hand, a claimant who refuses otherwise suitable work because the claimant does not wish to get a license or permit has generally refused work without good cause.

A claimant who refuses otherwise suitable work because the claimant doesn't think the claimant can obtain a license, permit or clearance has also refused work without good cause. The claimant has an obligation to try to meet the requirements of the job.

D. Attendance at Training Required by Employer

If a claimant refuses work because a prospective employer requires the claimant to attend training as a condition of hire:

1. Before being hired

   The offer of employment is a contingent offer and, as such, is not a bona fide offer. *See* SW 330.05, A. Contingent Offers for a discussion of contingent offers

2. After being hired

   That fact alone is not good cause for refusal, unless:

   - the claimant is required to pay the cost of the training,
   - the claimant will receive no wages during the period of training, or
   - the training is offered under conditions, such as location, hours of training, and the like which cannot be adjusted and that are a compelling reason for refusing to attend the training.

E. Testing for Intoxicants

For cases where the employee has begun work before the employer learns the results of the test, *see* MC 270 Use of Drugs or Alcohol.

If the claimant refuses work because the claimant cannot pass a pre-employment test, the claimant refuses with good cause. However, if pre-employment tests are customary in the claimant's occupation, there is an availability issue.

If the claimant refuses work because the employer requires random testing for intoxicants, the claimant refuses without good cause if the employer is legally entitled to require such testing. (See MC 270 for a discussion of when the employer may do this.) If such tests are customary in the claimant's occupation, there is also an availability issue.

170 EMPLOYMENT OFFICE OR OTHER AGENCY REFERRAL

170.05 General

A. Agency Referral Process

1. Employment office contact

   The claimant is contacted by the employment office regarding a possible referral, at which point the claimant may fail even to report to the office to discuss the referral. If the claimant fails to report, *see* SW 170.15 Failure to Report to Employment Office.

2. Offer of referral

   A referral, which must be based on an actual job opening for suitable work, is offered to the claimant. *See* SW 170.07 Availability of Job, and SW 170.1 Referral to Work.

3. Claimant's response to referral

   The claimant either accepts the referral, refuses the referral, or fails to report to the employer after accepting the referral. *See* SW 170.2 Refusal of Referral or SW 265.1 Failure to Report for Interview.

B. Referral by Other Agencies

Under AS 23.20.379(b) and 8 AAC 85.420, an issue is raised for refusal of referral only when the referral is made by an employment office. "Employment office" is defined under AS 23.20.520(12) as "a free public employment office or branch of one operated by this state or another state or territory as a part of a state-controlled system of public employment offices or by a federal agency or an agency of a foreign government charged with the administration of an unemployment insurance program or of free public employment offices." This definition rules out referrals made by an agency other than a public employment office, such as a private fee-charging agency. Of course, if a claimant accepts referral from an agency other than an employment office, and refuses or precludes an offer of work from the employer, an issue is raised under AS 23.20.379(b).

1. Union dispatch

   A union, in dispatching workers, acts as the hiring agent of the employer, since the dispatched worker is usually automatically hired by the employer. A union dispatch is therefore considered an offer of work.

2. Private fee-charging agency referral

A private referral agency is not considered an "employment office," and a refusal of a referral by such an agency does not raise an issue. An issue is raised only at the point at which the claimant reports to the employer and declines or precludes an offer of work from that employer. The fact that the private agency charges a fee for referrals does not make the work unsuitable, unless the fee is exorbitant in view of the expected wages.

170.07 Availability of Job

An offer of work must be based on an actual job opening, with the reason for the offer being that the employer needs the claimant's service.

> Example: A claimant (98 1500, July 30, 1998) was referred to a job at AAFES while on leave without pay status from AAFES due to a knee injury. When he contacted the supervisor, Joe, Joe did not know about any job openings at his site, but said he would call the claimant back. He did not do so, and when the claimant attempted to call his contact for the referral, she was not available. The Tribunal held, in allowing benefits, that the referral was not to a bona fide job offer, as there was no opening at the time.

If the employer did not have a job opening at the time of the referral or offer, there is no issue if the claimant refuses to apply for work or accept an offer of work. The employer must be prepared to make a definite commitment to hire the claimant at the time of the referral or offer.

However, any offer of work made by an employer is presumed to be genuine. This presumption is rebuttable only by positive evidence that the job offer is not based on an actual vacancy.

For a disqualification to apply, the job must be available. Generally, a job is considered available if the employer is prepared to make a firm commitment to hire and has established a starting date for the job, regardless of when the job will actually begin. The starting date must be definite. A job that is due to start at some indeterminate date in the future cannot be said to be open (80H-106, July 14, 1980.) The length of time before the starting date depends upon the practice of the occupation and the condition of the labor market. A low-wage job with many possible openings may be expected to start within a few days, while a highly-skilled occupation may have a starting date a month later.

This general policy, however, must be tempered by a consideration of the customs of the occupation and the claimant's circumstances. For example, a managerial position may be said to be available even if it begins thirty days or more after the actual offer is made. However, a waitress position due to begin within the same period of time may be considered so remote as to be unavailable. In borderline cases, a determination as to whether the work is actually available, and is therefore work which the claimant is required to accept, should be based on the claimant's circumstances and the availability of more immediate work in the claimant's labor market area. A claimant unemployed for a considerable length of time with no prospects of immediate work would be expected to accept work beginning further in the future than would a claimant who has been unemployed a short time and whose work prospects are excellent.

If the employer had already filled the position at the time of a referral, there is no issue if the claimant refuses the referral.

> Example: In Chandler v. Alaska Department of Labor (Superior Court, 3rd Jud. Dist., No. 76-16053, AK 1979), an employer notified the Employment Security Division that he needed two workers for a job of two or three days. The division attempted unsuccessfully to contact the claimant by telephone and then sent a call-in card that was received by the claimant on Friday, August 8. The claimant notified the division that, due to car trouble, he could not come in that day. He reported on Monday, August 11, and was referred. The employer told him that the job had been completed on August 5. The court held that the claimant had reported in a reasonable fashion to accept a referral to a job that was not available on the date of the referral.

170.1 Referral to Work

For a discussion of the requirements for a job offer, *see* SW 330 OFFER OF WORK.

A. General

1. Properly made referral

A claimant will only be disqualified for refusing a referral without good cause if the referral is properly made. *See* SW 5. B8. Properly Made Referral.

2. Telephone referrals

Referrals made by telephone are handled in the same way as referrals made in person, provided the referral meets the standards set out below.

Distinguish between telephone **referrals** and telephone **call-ins**:

- A referral requires a definite response from the claimant at the time of the telephone call.

- A call-in, on the other hand, directs the claimant to report to the employment office, and the referral may or may not be offered when the claimant reports. Failure to respond to the call-in also raises a SW issue, if the claimant was clearly directed to report to the office.

  Example: In AW-494, a claimant, whose usual employment was as a sales clerk, was contacted by telephone and asked if she would be interested in a job of three days' duration doing survey work. She refused to consider the job because she had no experience in survey work. She was not told the specific nature of the work and she was not asked to contact the employer or the employment office regarding this job. The Tribunal held that the claimant did not refuse a referral, since no referral was made. An inquiry was made to determine whether the claimant was interested in a job that was not within her occupation.

The telephone contact above was not a call-in, since the claimant was not directed to report to the employment office to discuss the job further. The matter was disposed of entirely within the initial telephone contact, but without the elements necessary for a genuine referral.

B. Referral must be offered

With the single exception in 1 below, the interviewer must have offered the referral so that the claimant knew and understood that the claimant was being

offered the referral and could therefore definitely accept or reject it. If there is any doubt that a definite referral was offered, resolve that doubt in favor of the claimant.

1. Failure to report for possible referral

   If the claimant fails or refuses to report to the office in response to a call-in for possible referral, the claimant may properly be considered to have refused the referral. (See SW 170.15 Failure to Report to Employment Office.) The agency does not have the unreasonable burden of definitely offering the referral when it is impossible to do so.

2. Authority to offer referral

   The referral must be based on an agreement between the employment office and the employer for the office to make referrals to fill existing job openings. The usual evidence of this agreement is an ES job order, but a written job order is not absolutely necessary, so long as it can be established that the agreement does exist.

   Job development contacts suggested in an interview, where there is no job order or known opening, are not referrals. The same is true of contacts suggested by newspaper ads, rumors, or other information not based on an actual job order. It is perfectly acceptable to suggest such contacts, and an availability issue may be raised by a claimant's failure to follow-up on them, but there is no issue under the suitable work provision.

3. Formal referral not made

   It is not necessary that there actually be a formal referral. However, the job must have been discussed in enough detail for the claimant to decide whether it was suitable, and the claimant must have known and understood that the referral was available.

   Often an interviewer may ask if a claimant is interested in a certain type of work without offering a specific referral. The interviewer may withhold a referral before the job conditions are discussed or before the claimant is aware that the referral is being offered, usually because of claimant attitude, restrictions, or qualifications; or the interviewer and claimant may mutually agree that the prospective job is not suitable. In such cases, the only possible issue raised is one of **availability**.

   > Example: In AW-2877, a claimant was contacted by phone regarding a job as a junior accountant. The claimant was not interested because the salary was in his opinion too low, and because he was a senior accountant and therefore overqualified. The claimant testified that, at the outset of the discussion regarding

the job, the ES interviewer indicated she did not think he would be interested in the job, as he appeared to be overqualified. The claimant and the interviewer apparently agreed that an interview with the employer would be a waste of time. The Tribunal held in this case that no referral had been made.

However, it is possible for a preclusion of referral to be made. See SW 170.2 Refusal of Referral.

4. Misunderstanding

If a referral is withheld because of a misunderstanding, or if the claimant is not aware that a referral is being offered, there is no refusal issue, unless the failure to communicate is clearly due to the claimant.

Example: In 246, a claimant was contacted by the employment service by telephone and offered a job as a camp cook. The claimant misunderstood the interviewer and thought the job was at a salmon cannery. He knew that a cannery position would not compare with the wages he made as a construction camp cook. Although it was the intent of the interviewer to offer the referral, when the claimant questioned her further, she told him to "forget it," which he did. It was held that there was sufficient misunderstanding, not due to claimant fault or negligence, concerning the terms of the referral, to allow benefits.

C. Sufficient Information to Determine Suitability

A referral is not properly made unless the claimant was given sufficient information to determine the suitability of the work.

1. Claimant's opinion as to suitability

The claimant's personal opinion as to whether the work is suitable and as to whether the claimant had good cause to refuse it is not the basis for determining eligibility.

2. Information required

The claimant must be informed about:

- job duties;
- location of the work;
- hours of work;
- wages;
- working conditions;
- equipment needed, if any; and
- union requirements, if any.

These conditions are a minimum requirement, and there may be other conditions, which in some cases are crucial to determining suitability of the work.

3. Erroneous information

There is no issue if a claimant receives misleading or erroneous information that results in the claimant's drawing a reasonable conclusion that the work is unsuitable or that there was good cause to refuse it, even though the work in actuality was suitable.

4. Claimant informed of prevailing conditions

A claimant who objects to a specific condition of work, usually the wage rate, must be told what the prevailing condition or rate actually is. Otherwise, the claimant is in no position to determine whether the work is suitable. If the claimant has not been so informed, where circumstances required it, there is no issue under this statute.

5. Employer's name not necessary

Although, to determine its suitability, it is necessary to tell the claimant the location of the offered work, it is not necessary to give the exact address and employer name. The latter information is usually given only to a claimant who accepts the referral. (*See* E below.)

D. Adequate Direction to Apply

When the claimant accepts a referral, the interviewer must give the claimant the date, time, place, and person to whom to report for the interview. If there is any doubt as to whether instructions were clear, resolve the doubt in favor of the claimant. However, when instructions are unclear or erroneous, the claimant must try to get additional correct information.

Example: In 774-123, the claimant contended he was given incomplete instructions by the employment office and submitted a letter from the employer stating that the job was difficult to find. In denying benefits, the Commissioner said, "I am not convinced [the claimant's] actions have shown any real desire for employment. A reasonable course of action would have warranted further effort to locate the referred job site . . . rather than blaming local officials for his inability to find the site."

170.15 Failure to Report to Employment Office

A. General

Failure to report to the employment office in response to a call-in for a referral is treated the same as a refusal of a referral if:

- the call-in, whether by telephone or mail, clearly directed the claimant to report for the purpose of an interview for a specific job;
- the claimant received the call-in; and
- the claimant did not have good cause for failure to respond.

B. Purpose of Interview

There is an SW issue only if a job opening actually existed at the time of the referral or offer. A call-in to discuss a claimant's qualifications, a change in the claimant's occupational classification, or for any reason other than a referral to a specific job opening, may raise an A&A issue, but does not raise a SW issue.

C. Receipt of Call-in

There is not a SW issue if the claimant did not receive the call-in, or received it too late, unless the failure to receive the call-in was caused by claimant actions showing intent to avoid the referral.

1. By mail

A call-in card sent by mail to a claimant's address of record is presumed to have been received, unless the claimant can show circumstances such as incorrect address, poor mail service, absence, that precluded receipt of the call-in. If it is clear that the claimant has intentionally avoided referral by giving an incorrect or inadequate address or by not picking up mail, there is both a SW issue and an A&A issue; however, any doubt in such cases must be resolved in favor of the claimant.

Where the claimant does not receive the call-in because of the claimant's absence from the claimant's normal address, there is no issue unless the absence was for the purpose of avoiding referral.

> Example: In 75A-356, a claimant who missed a call-in because of an out-of-town work search was found eligible, as his reason for missing the potential referral decidedly supplied good cause.

2. By telephone

In most cases, there is no issue if the claimant fails to respond to a telephone call-in unless telephone contact was made directly with the claimant. Messages given to a claimant's wife, child, or friend are not a

reliable means for informing the claimant of job openings. However, there is an issue if the claimant admits to receiving and understanding the message.

Example: In 77H-301, a claimant failed to respond to a telephone call-in taken by his mother. The determining fact was the claimant's admission that "he knew the call to report at 9:45 a.m. on September 12, 1977, came from the unemployment insurance office" and was for the purpose of a placement interview. In denying benefits, the Commissioner held that the claimant's contention that he was not given the name of someone to contact was irrelevant.

D. Good Cause for Failure to Respond

1. Prior knowledge of job conditions

If a claimant has good cause for refusing a referral to a specific job, the claimant also has good cause for failure to respond to a call-in for referral to that job. If the claimant has current personal knowledge of the prospective job, and the facts confirm that the job was in fact unsuitable or that the claimant had good cause to refuse it, there is no SW issue.

These conditions ordinarily exist only where the claimant has been recently employed by the prospective employer or has recently interviewed for the position. In all cases, the controlling factor is what the conditions of the work actually are, not necessarily what the claimant thinks they are.

In all cases, an interview with the employer, or at least a response to the call-in, would be the reasonable course to follow. Therefore, a claimant's contentions of unsuitability or good cause must be supported by the evidence.

2. Independent action taken by claimant

A claimant is expected to respond to call-ins, when received, by contacting the employment office. A claimant who, upon receiving a call-in, independently contacts the employer has not responded to the call-in.

Example: In 78H-85, the claimant independently contacted the employer in response to the call-in. In denying benefits, the Commissioner stated, "[B]y [the claimant's] failure to respond in a positive manner to a request to either contact or call the Job Service office, he effectively refused referral by that office to available suitable work. I also hold that the reasons for failure to respond do not constitute good cause."

170.2 Refusal of Referral

A. Refusal or Acceptance

Before considering a claimant's reasons for failure to apply, it must be determined whether the referral was refused or accepted.

1. Preclusion of referral

A claimant who behaves in such a way as to preclude an offer of work from an employer has in effect refused the offer. A preclusion may also occur during the referral process. The claimant need not have been told what the specific job was if the claimant in some way precluded a referral. The interviewer must have presented the referral to the claimant with sufficient information regarding the prospective job as to allow the claimant to intelligently accept or refuse it. If the claimant then behaved in such a way that the interviewer **is certain** that sending the claimant would be fruitless, the claimant has precluded work, and there is a SW issue. The claimant must clearly display a reluctance to go on the interview, documented by specific words or behaviors, and the work must be suitable.

However, distinguish the preclusion of a referral from the mutual understanding between interviewer and claimant that the work is unsuitable. For a preclusion of a referral to exist, the claimant must understand that a referral is or will be offered.

Example: In 76A-316, an interviewer telephoned the claimant regarding a job opening for a breakfast cook that required private transportation, since the bus system did not operate at the hour when the shift began. When the claimant replied that she did not have the required transportation, she was told that she would not be considered for the position. The Tribunal determined that the claimant's candid response caused the withdrawal of the referral, and that, on this basis, the claimant did not fail to apply for or accept referral to available suitable work.

Example: A claimant is called and told about a job as a bank teller, which the claimant agrees is suitable work. The claimant is told to come to the office to get the referral card, and then the claimant will be sent directly to the employer. The claimant comes in wearing shorts and a tank top. If the claimant understood the conditions of the job and that the claimant was to come prepared to go to the interview, the claimant has precluded the referral to the job.

Example: A claimant drops in to the Employment Service office to look for possible jobs. The claimant smells of alcohol and speech is

slurred. The claimant has not precluded a referral, because the claimant had not come to the office specifically in order to be referred. However, if the claimant in the same condition had been called in to the office to be referred, the claimant precluded a referral.

2. Refusal by agent of the claimant

At times with telephone referrals a claimant's spouse refuses the referral in the name of the claimant. Such a refusal by a friend, relative or other agent of the claimant that precludes offering the referral to the claimant does not usually raise a SW issue. The controlling point here is that the referral must be offered **to the claimant** and a response received **from the claimant**. However, a claimant who is chronically inaccessible to referrals is not available for work.

3. Necessity for contacting employer

A claimant who acts promptly and diligently to apply for work to which the claimant is referred has complied with the referral, even though the claimant may have initially verbally refused the referral.

Example: In 80B-411, the claimant was found eligible when, immediately after he initially refused the referral, he contacted the employer to inquire further about the conditions of the job.

B. Cause for Failure to Apply

It is the claimant's responsibility to apply for suitable work to which the claimant has been properly referred by the employment office. If the claimant has any doubt as to the suitability of the work, after the employment office has given adequate information to make such a judgment, then it is the claimant's responsibility to inquire further of the employer. However, there are exceptions that give good cause for failure to apply.

1. Simultaneous referrals

If a claimant is given a choice of several referrals there is no issue so long as the claimant applies to at least one of the employers. However, if the claimant's instructions are to report to the employment office for another referral if the first interview is unsuccessful, or if the claimant is given several referrals with instructions to apply to all of the employers unless hired, then the claimant's failure to follow these instructions raises an SW issue.

2. Acceptance of another job

Good cause for failure to apply due to acceptance of another job depends on:

- whether the referral was to temporary or permanent work; and
- whether the job accepted was temporary or permanent.

A claimant who refuses permanent or full-time work to accept a temporary or part-time job has not established good cause. However, if the job accepted was permanent/full-time, or if the job to which the claimant was referred was temporary/part-time, then there is good cause.

3. Unable to meet job requirements

A claimant who does not apply because the claimant does not meet the requirements of the job is eligible if adjustment of the job requirements is not possible and the claimant has made a reasonable effort to meet the requirements. (See SW 165 Employer Requirements.)

> Example: In 76A-1713, a claimant accepted referral to a job as a credit clerk, but decided not to contact the employer because she felt the job was not suitable for her. She stated that she was not good at working with figures and did not like to answer phones, both of which duties she assumed the job entailed. The Tribunal held that the claimant's assumption that the job was unsuitable was based on no clear-cut facts and did not provide a valid reason for refusing the referral.

4. Unable to apply

If the claimant contends inability to apply because of misdirection or otherwise having been prevented from applying, it must be shown that:

- the claimant was actually misdirected and attempted to obtain correct information, or
- the claimant was prevented from applying by compelling circumstances and applied as soon as was possible and reasonable under the circumstances.

180 EQUIPMENT

The fact that a job requires the employee to buy tools, equipment, clothing, and the like does not necessarily make it unsuitable or give good cause for refusing it. A claimant who refuses to provide customary equipment when the claimant is able to do so does not have good cause for refusing work.

However, a claimant has good cause to refuse the prospective work if:

- the claimant is unable, due to lack of funds or other cause, to provide the necessary equipment, or
- if the requirement to provide equipment is unreasonable, or
- if the requirement is not customary for the occupation.

If a claimant is unable to provide equipment that is customarily expected in the occupation, there is a question of availability. (*See* AA 180 Equipment.)

195 EXPERIENCE OR TRAINING

195.05 General

Regulation: 8 AAC 85.410(a)

Work is suitable in any occupation for which the claimant has prior experience and training to perform.

A. Principal Occupation

For a definition of the claimant's principal occupation *see* SW 5.B.1 Customary Occupation.

The fact that there is no hiring going on in the claimant's labor market in the claimant's principal occupation is irrelevant to whether the occupation may be considered the claimant's principal occupation.

B. Prior Experience and Training

If the claimant cannot be restricted to the principal occupation, the claimant may still be allowed restrictions to work in which the claimant has prior experience and training.

A claimant has prior experience and training to perform a particular job if the claimant's prior job experience or training enables the claimant to apply these acquired skills to the new job.

> Example: A variety of clerical and office occupations are suitable for an office clerk because the office clerk can apply acquired skills to these jobs. On the other hand, only machinist work is suitable for a machinist unless the machinist has prior experience and training to perform other work.

The purpose of this provision is to avoid downgrading the skills of claimants through operations of the UI benefits program.

In determining whether a claimant is reasonably qualified by training or experience to perform a particular job.

195.1 Insufficient Experience or Training

A worker seldom has good cause for refusing work solely because, in the worker's opinion, the worker has insufficient training or experience to perform the work. This is usually for the employer to decide.

> Example: In A-3066, a claimant whose principal occupation was general office clerk refused a job in that occupation because her previous experience had been in specific tasks, and she felt she could not perform a job which required a knowledge of all aspects of general office work. Her work experience and qualifications were discussed with the employer. In this case, the claimant was denied benefits, since the employer had offered the job with full knowledge of her background and was therefore the best judge of her ability to perform the work.

However, if the worker's belief that the worker lacks sufficient experience or training is supported by evidence, the work is not suitable.

> Example: In 87H-UI-088 (July 20, 1987) the claimant, an elementary school teacher, was offered a referral to a position as a preschool teacher. She refused the referral because the salary was too low, and she did not have preschool experience. The Commissioner, in allowing benefits, held that, at the time that the referral was offered to the claimant, the job order specified preschool experience was necessary, and therefore the job was not suitable work.

195.15 Risk of Loss of Skill

If there is an actual risk that the claimant will lose skill by accepting a less skilled job, the claimant has good cause for refusing the work. However, the burden of establishing the likelihood of loss of skill is upon the claimant who asserts that as the basis for refusing the opportunity for work. Rarely does a determination stand on the loss of skill factor alone. Generally, other factors are involved. Consider also wages, prior earnings, working conditions, length of unemployment, and work prospects. (*See* appropriate subcategories within the SW division.)

Generally, as the period of unemployment lengthens a claimant is expected to modify a restriction as to work within a particular skill level.

195.2 Use of Highest Skill

Ideally, a job should make maximum use of a worker's highest skill, but a modification is required if the worker's skill is not in demand either during a long seasonal slack period, or because of technological changes or other factors resulting in a lack of work prospects. Here again, other factors are important, including especially the claimant's prospects for obtaining work that makes use of the claimant's highest skills.

> Example: In AW-1011, a claimant whose primary occupation was as an accountant refused, after twelve days of unemployment, a referral to a bookkeeping job at a substantial reduction in pay from her previous salary. She felt that she was overqualified for the job and that she could obtain employment at her own field at a commensurate wage. A week later, she did obtain such work. It was held that the claimant refused referral to work that, considering the length of her unemployment, was not suitable for her.
>
> Example: In 76A-1258, a claimant's job was abolished, and he refused an offer of half the job back at a substantial reduction in his salary. The job had formerly involved the two separate functions. One function involved providing training assistance and guidance for those conducting litigation throughout the Alaska Legal Services program. The second function involved work as a lobbyist, representing the company and its clients to the Alaska legislature. A management decision was made to split the position into two separate jobs, one located in Anchorage involving litigation and courtroom work, and the other located in Juneau as a lobbyist. The claimant at the time of his termination was making approximately $27,000 per year. Under the new job, he approximated his salary would be $20,000 per year. The Tribunal held that the claimant's former job had allowed him to perform at a level commensurate with his highest skills, both at the legislative level and at the courtroom level. Under such circumstances, the new job offered him was unsuitable at the time of the refusal.

The amount of a claimant's job experience at the claimant's highest skill level is often a factor in determining whether a claimant's restriction to a given skill level is reasonable. A claimant who has been employed at a particular skill level for only a few months before becoming unemployed cannot for long reasonably insist on becoming re-employed only at that level.

235 HEALTH OR PHYSICAL CONDITION

235.05 General

A. General

1. Accepting work detrimental to claimant's health or physical condition

If 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 this statute. However, there may be an A&A issue.

> Example: In AW-701, a claimant, whose primary occupation was keypunch operator, was referred to a job as a house-to-house survey worker. She refused the job since it required being on her feet all day, extensive walking, and climbing stairs. She has never done this type of work and was not accustomed to any work involving physical effort. It was held that the claimant refused work that was not physically suitable for her.

A claimant's health may be adversely affected by accepting a particular job even if the actual performance of the job duties is not detrimental.

> Example: In AW-582, a claimant, who was under a doctor's care, was referred to work as a fire watchman at an isolated village. The claimant refused the offer and submitted a physician's statement that he was able to work but was required to remain in an area where he could receive medical treatment. It was held that the claimant's need for continued medical treatment precluded his acceptance of the job offer, and that under these circumstances the job offered was not suitable for him.

2. Pregnancy

Although, of course, pregnancy is neither an illness nor a disability, there are times when a claimant may refuse a particular job or referral because of pregnancy. Adjudicate these refusals on the same principles as for any other illness or disability.

Be especially aware that a physician's statement may be less valuable, in that a pregnant woman's condition changes throughout her pregnancy, so that what is suitable at one stage may be unsuitable later, and what is unsuitable at one point may later be allowable.

A refusal of work after childbirth may involve childcare and nursing problems rather than problems relating to a claimant's health.

3. Physician's Statement

a. When required

A claimant who refuses otherwise suitable work for reasons of health usually must furnish a physician's statement as to its existence and extent. However, a physician's statement is not necessary when:

- the claimant's health problem is one that is obvious to a layperson, such as lack of limbs, blindness, or other acute or obvious disorder; or

- the claimant's disability is readily verifiable by other means, including work history, previous medical documentation of illness or disability, previous quit with good cause for the same health reason, or visual observation of the claimant.

b. Weight of physician's statement

Although a physician's statement is valuable in determining the existence and extent of a claimant's disability, it is of less value in determining whether a particular job is detrimental to a claimant's health, since the physician is usually not familiar with the conditions of the job itself.

In addition, although a physician's statement is usually given substantial weight, it should not be emphasized to the exclusion of other evidence, including the claimant's own testimony. Generally, a physician's appraisal of a claimant's health or physical condition is given greater weight than that of the claimant. However, in cases where the physician's statement differs from the claimant's, in weighing it, consider:

- how recent was the physical examination,

- the length of time in which the claimant has been under this physician's care,

- the degree to which they physician's statement is specific, and

- the credibility of the claimant's testimony.

B. Obligation to Investigate Conditions of Work

A claimant who refuses work for health reasons must make certain that the offered work affects the claimant's health. This usually means application for the position and an interview with the employer to determine working conditions. However, if stated or written job requirements clearly indicate that the conditions exist, an interview is not necessary.

C. Obligation to Attempt Adjustment

Before there can be good cause for refusal of suitable work because of health reasons, the claimant must, when appropriate, make a reasonable attempt to adjust the employer's requirements or the claimant's own circumstances.

1. Claimant's physical condition

The claimant must attempt any reasonable adjustment, such as getting glasses, or using minor health aids. However, if it is not clear that the treatment or aid allows the claimant to do the work, there is no issue. In addition, the expense of medical aid or treatment may make it impractical.

2. Working conditions

In some cases, an employer may make adjustments to accommodate a claimant's health problem, and the claimant should make a reasonable attempt to get such an adjustment. Adjustments by the employer are required under the Americans with Disabilities Act if they are reasonable. If they are not reasonable, there is of course no issue if the claimant does not attempt them.

235.45 Risk of Illness or Injury

Any work is unsuitable which imposes a risk to a claimant's health that is:

- Not customary in the occupation; or
- Contrary to federal or state statute or regulation, including especially those under the Occupational Safety and Health Act (OSHA).

Since different occupations carry varying degrees of risk to health and safety, work that has a level of risk that is customary to the occupation is not unsuitable on that basis alone. However, if the offered work is outside the claimant's principal occupation, if the risk level of the offered work is greater than that of the claimant's principal occupation, the new work may be unsuitable for that particular claimant.

265 INTERVIEW AND ACCEPTANCE

265.05 General

In the successful interview process there are four steps:

- The claimant goes to the interview;
- The claimant and the employer discuss the job and the claimant's qualifications;
- The employer offers employment and the claimant accepts it; and
- The claimant begins work.

In each of these there is possibility for honest misunderstanding on the part of either the claimant or the employer, for deliberate preclusion of the offer, for withholding of the offer by the employer, for refusal of the offer by the claimant, and for failure to report to work by the claimant.

265.1 Failure to Report for Interview

A failure to apply for work raises no issue unless the claimant was referred by an employment office. (*See* SW 170 Employment Office or Other Agency Referral, SW 170.05 General.) However, once a claimant does apply, if the claimant is not hired through the claimant's failure to complete the application process, there is a work refusal issue, even though the direction to apply is from other than a public employment office.

A. Necessity for an Interview

Ordinarily an interview with the employer or the employer's representative is necessary, at the employer's option. However, if the claimant has sufficient information about the prospective employment upon which to form a correct opinion that the work is unsuitable, the claimant may choose not to be interviewed. It is the claimant's obligation to definitely learn whether the objectionable conditions of the employment do exist, and whether they might be adjusted. The controlling factor is what the conditions of the work actually are, not necessarily what the claimant thinks they are. (See SW 170.2 Refusal of Referral for a further discussion.)

At times, a claimant may telephone the employer, or in rare cases, send a friend or a relative instead of going to an interview. Although these substitutes may be satisfactory for the claimant, they are seldom a satisfactory means for the employer to judge the claimant's qualifications and abilities. For this reason, a claimant who relies upon a substitute for a personal interview has precluded an offer of work, unless the claimant has been told that an alternative to a personal interview is acceptable or the claimant is unable to attend the interview in person.

B. Reasonable Diligence in Applying

1. Need to Report as Directed

Generally after receiving a referral, a claimant should report as soon as possible, unless instructed otherwise. However, reasonable dispatch cannot be arbitrarily defined in terms of hours, days, or minutes. If the claimant is given specific instructions to report immediately, only compelling reasons for not doing so provide an excuse. (*See* SW 170.2 Refusal of Referral for further discussion.)

Example: In 76A-876, a claimant was referred to an opening in an area with which he testified he was unfamiliar. When he got lost in trying to find the employer's business, he did not call the employer or employment office to obtain further directions. In fact, he made no further effort to report to the employer until the following day, when he called the employer and was told the position had been filled. It was held that the claimant had not made a reasonable

effort to contact the employer, and had thereby failed, without good cause, to apply for suitable work.

The time at which the referral is made must be considered in evaluating promptness and diligence. If the referral was made in the late afternoon, without specific instructions to report on that day, waiting until the next workday to apply is reasonable. Generally, delaying beyond the next workday is unreasonable.

2. Good cause

Any compelling circumstance that prevents a claimant from reporting for an interview is good cause, provided the claimant notifies the employer or employment office of the circumstances and attempts to make other arrangements. (*See* SW 170.2 Refusal of Referral for further discussion.)

Circumstances that may provide good cause include sudden illness, domestic emergency, or misdirection. However, the claimant in all cases must exercise reasonable diligence in obtaining clarification of unclear directions or in resolving any other problem that prevents immediately contacting the employer.

Example: In A-4657, the employer informed the claimant that she would be called if needed. At the time of the employer's call, she was out of town seeking work in her principal occupation. Upon returning home, she was incorrectly advised by her sister, who had taken the call, that the employer would call again or notify her by mail. She therefore took no further action. The Tribunal held, on the basis of the above facts, that the claimant was without fault in her failure to obtain the work.

3. Acceptance of Other Work

In some cases, the claimant may accept other work before the time of the interview. Acceptance of another job is good cause for failure to report, and the claimant is not obligated to notify the employment office or employer of the reason for the failure to report. However, the other position must have been assured to the claimant, and must be for permanent work, unless the job to which the claimant was originally referred was only temporary.

A claimant who delays because the claimant thinks the claimant has other work prospects, none of which are positive, does not have good cause. (*See* SW 365 Prospect of Other Work)

4. Prevailing customs

Prevailing commuting practices, the distance of the prospective work, and the customs of the occupation are also factors. A laborer may be expected to apply within an hour, while a professional person may act reasonably in delaying longer to prepare resumes or work samples when necessary.

In any event, if the claimant's actions or lack of actions resulted in the claimant's not obtaining suitable work there is a SW issue.

265.2 Failure to Reach Agreement

A. Offer Not Made

A claimant cannot be disqualified for refusing work (as distinguished from failure to apply for work) unless an outright and unequivocal offer of work was made by the employer, unless the lack of an offer was due to the claimant's own fault.

> Example: The employer may decide that the claimant is not suitable or that another applicant is preferable; or, even though the claimant is willing to accept the conditions offered, the claimant's bargaining in good faith causes the employer to withhold the offer.

A claimant who conceals or minimizes qualifications has precluded an offer of work. (*See* SW 330 Offer of Work, SW 330.05 General for a more complete discussion of preclusion of an offer. See also SW 170.2 Refusal of Referral, for related discussions.)

B. Disagreement over Whether Offer Was Made

The employer and claimant may disagree over whether an offer of work was actually made. If it appears that there was a misunderstanding that caused the claimant to believe that no offer was made, there is no issue, unless the misunderstanding is attributable to the claimant's negligence or failure to obtain clarification where appropriate.

> Example: In 76A-984, the employer attempted to contact the claimant. The employer later testified that he was unsure whether the claimant was contacted in person but he believed that someone at the claimant's telephone number was given a message for the claimant to call the company in regard to possible work. The claimant denied receiving any call. In allowing benefits, the Tribunal said, "[N]o definite job offer was ever conveyed to [the claimant] by the potential employer . . . [so] that he did not by his actions preclude an offer of suitable work nor did he refuse such offer."

C. Bargaining with Employer

As a general rule, a claimant may properly ask for higher wages and better working conditions than those the employer originally offered. Bargaining with the employer is acceptable, even though the conditions offered are prevailing or otherwise suitable, so long as the claimant is qualified by prior experience and earnings to ask for the requested condition and is willing to accept the offered conditions. The mere expression of disappointment at a particular condition of offered work is not a preclusion of an offer of work.

Example: In 77H-329, the Commissioner upheld the Tribunal in allowing benefits when a claimant had expressed disappointment to the employer over the wage offered. The Tribunal noted that:

- The claimant did not state that she did not wish to be considered for the position, but rather stated that she was discouraged by the low salary being offered.

- The claimant's prior experience and training qualified her for a higher wage.

- The claimant was willing and able to accept the offered work because she accepted not only an interview with the screening agency involved, but also with the employer, knowing beforehand what the job paid.

Additionally, a claimant may quite properly insist upon certain conditions or adjustments before accepting work, for example, in regard to a physical disability or domestic circumstances. Under these conditions, if the claimant can show that the work is unsuitable if the conditions could not be met, a failure to reach agreement is not an issue, even though the claimant has in effect refused the work. But where a claimant haggles or holds out for conditions when the work is suitable and there is not good cause to refuse it, these actions amount to a refusal of an offer of suitable work without good cause.

Example: In 76H-94, a claimant accepted a referral to a manager trainee position paying the prevailing rate. The claimant asked for a higher wage. When the employer asked the claimant if he would accept less, the claimant responded that he would "possibly accept less." The employer then notified the employment service office that the claimant's bargaining for higher wages precluded his being considered for the job opening. The Commissioner found the claimant ineligible in this case, because:

- The wage offered was prevailing and compatible with the claimant's training and experience; that is, he was not qualified to ask for a higher wage;

- The claimant's action amounted to a preclusion of an offer of work; and

- Considering the claimant's background and the conditions of work, his preclusion of the offer was without good cause.

D. Requesting Time for Consideration

It is allowable for a claimant to request a reasonable period of time to consider an offer. In addition, an employer requirement that the claimant is unsure of being

able or willing to meet may give good reason for requesting time to consider the offer. In determining the reasonableness of the claimant's request, consider:

- the claimant's occupation,
- prospects of other work under different conditions from those of the offered job, and
- the urgency of filling the position.

Example: A waitress with no prospects of other work may be expected to give almost an immediate answer, whereas a professional person with several prospects, all with varying conditions of hire, may be allowed considerably longer to decide.

Example: In 76A-1048, the claimant preferred a position that provided medical coverage, and the employer did not offer that benefit. It was standard for employers in the area to provide medical coverage in the claimant's occupation. The employer initially agreed to the delay but, when called two days later by the claimant, had filled the position. The Tribunal held the claimant eligible as she had not refused the job, but only asked additional time to consider it, and she had good reason for not accepting the work immediately, since medical insurance was customarily provided.

E. Inability to Perform Work

If the employer decides that a claimant is not capable of performing the duties of the job, there is no issue, unless the claimant has concealed or misrepresented qualifications.

Generally, the employer is the sole judge of the claimant's ability to do the work. The claimant's belief to the contrary is, consequently, usually not good cause for failure to apply or give the work a trial. However, where the work is clearly unsuitable, or where doing the work is detrimental to the claimant's health, the claimant need not accept it.

Example: In 76A-669, a claimant who had several years of experience in logging, but had been out of the occupation for some time, refused a job as a hook tender because he felt he could not handle the position. He testified that he had spoken to a friend who had recently worked in the same logging camp, who informed him that he would be required to do the work of three men since the camp was shorthanded. The Tribunal held that the claimant had refused an offer of suitable employment without good cause because:

- By relying only on information provided him by a friend, he had not shown conclusively that the job was unsuitable for him;

- Considering the length of his unemployment, it was reasonable to expect that he would at least accept the job on a trial basis; and

- It is generally the prerogative of the employer to judge whether the employee can perform a particular job.

F. Failure to Meet Employer Requirements

If the claimant actually does not meet an employer's requirements, and if neither the employer's requirements nor the claimant's circumstances can be satisfactorily adjusted, there is no issue. However, a claimant who conceals or minimizes qualifications, or terminates the interview without discussing matters that could have been adjusted so as to make the claimant acceptable to the employer may be found to have refused the work without good cause. The determination must still consider whether the work was suitable.

A claimant who is unsure of the ability to meet an employer's requirements is obligated to learn the requirements and try to meet or to adjust them. An unsupported assumption of inability to meet the employer's requirements is never sufficient to provide good cause for refusal.

However, if the claimant knows the claimant is unable to meet the requirements and this belief is supported by the evidence, there is no issue.

> Example: In AW-3394, the Tribunal held the claimant eligible when he refused a job as a lineman because it had required that he pass a physical with an "A" rating. He knew he was unable to do this because of a disabling neck injury, documented by a physician.

G. Refusal to Meet Employer's Requirements

A claimant who does not try to comply with a reasonable employer requirement has refused suitable work without good cause.

If the requirement is unreasonable, the claimant has good cause for refusing the prospective employment based on that fact alone, regardless of the reasons for not complying.

Generally, an employer's requirement is reasonable if:

- it is customary, and
- it is related to the actual duties and responsibilities of the job.

A requirement that is not customary for the occupation may be reasonable, if the circumstances of the particular employment make it necessary. However, a requirement based solely on an employer's personal preference, unrelated to the actual performance of the job, or on employer's desire to exercise undue control over employees during non-working hours, is unreasonable.

Example: In A-4263 the Tribunal held that a requirement that an applicant for a position in a health spa lose ten pounds in one week is unreasonable

Example: The Tribunal held in AW-2865 that an employer's insistence that an applicant for a part-time position guarantee that he would not leave the position to accept full-time work was unreasonable.

Example: In AW-925 the Tribunal held that a requirement that a waitress report for offered work within forty-five minutes, when the customary notice, as required by the union involved, was two to three hours was unreasonable.

H. Preclusion of Offer

1. General

The fact that the claimant has precluded an offer of work is not alone the basis for a denial of benefits. Preclusion merely establishes that the offer was in effect refused. Suitability of work and lack of good cause must be shown.

Of course, it may be that the suitability of the work is obvious and uncontested, or that the circumstances of the claimant are not good cause. In such cases, the determination turns on whether the claimant's actions amounted to a refusal, or whether this failure to obtain work was attributable to the employer.

2. Frankness with employer

A claimant who honestly answers an employer's questions on an application or in an interview is not subject to disqualification even if the answers to the questions cause the employer to withhold the job offer. In fact, it is the claimant's obligation to give the employer any information that has a direct bearing on the claimant's fitness for the position. This honesty does not, however, include asking for wages or other conditions of employment that are not customary or not justified by the claimant's training or experience.

Example: In 77H-317, a claimant was referred to a job as an accounting clerk that paid above the prevailing rate. Although the claimant did not interview for the position, she did report to the

employer and complete an application on which she wrote that her minimum acceptable salary was almost twice the offered pay. Since the claimant admitted that she knew the offered rate, and since her entry on the application form caused the employer not to consider her for the job, the Commissioner held that she had in effect refused an offer of work.

Example: A claimant whose only previous work experience was as a laborer, with no immediate prospects of other work, informs a prospective employer that he will accept work in that occupation at the prevailing rate, but only until "something better comes along." In this case, the claimant's statement, although perhaps perfectly honest, has the predictable effect of precluding an offer of work. In addition, because the claimant has no work prospects and the work is in his normal occupation, his actions create a presumption that he is indifferent to the prospect of reemployment and intends to discourage the employer from hiring him. The claimant has precluded suitable work.

In 76B-325, a claimant who had retired from the military service was referred to a job as a mail clerk. He interviewed for the job, agreed to accept it, and was prepared to start work. However, he informed the employer that he had taken at least fourteen state job examinations, that he was looking for work other than as a mail clerk, and that if such work became available he would probably accept it. Upon this disclosure, the prospective employer advised him that he would not be able to use his services. In allowing benefits, the Tribunal held that the claimant had indicated a willingness and ability to accept the offered work and had "honestly and properly" advised the prospective employer of the facts. (It may be presumed in this case that the basis for the Referee's decision was the fact that the claimant's circumstances indicated a sincere desire to become re-employed in suitable work, rather than an attempt to discourage the employer from hiring him.)

A claimant being interviewed for a position as a security guard volunteers the information that, while he has never been convicted of a crime, he was once arrested and charged with theft, although charges were later dropped. In this case, the information provided by the claimant relates directly to the requirements of the job and is the kind of information that the employer would reasonably wish to consider in filling the position. The claimant did not preclude work.

3. By attitude

A claimant whose behavior shows unwillingness to consider or accept the employment has precluded an offer of work. Attitude can be inferred only from the claimant's behavior. The basic test is whether the claimant's

behavior is consistent with a professed willingness to accept the prospective employment, or whether it shows an attitude of indifference or an attempt to discourage the employer from offering the work. In any interview, the claimant has the obligation to behave, to the best of the claimant's ability, in a way that makes the claimant acceptable to the employer.

> Example: The claimant's insistence during the interview that the claimant does not meet the employer's qualifications or cannot do the work may show a negative attitude that may cause a potential job offer to be withdrawn.

In all such cases, it must be shown that the claimant's attitude or behavior was the reason for withdrawal or withholding of an offer of suitable work, which otherwise would have likely been made. It is not required to prove beyond a doubt that the employer would have offered the position to that particular claimant, but it is necessary to show that the job was available and that the claimant's actions precluded the employer from considering the claimant. (See SW 265.2 Failure to Reach Agreement, SW 330.35 Withdrawal, and SW 363 Personal Appearance, for related discussions of this topic.)

265.3 Failure to Accept Job

For a discussion of refusals related to the conditions of the job itself or to the claimant's personal circumstances, see the appropriate categories within the SW division dealing with the specific reason or reasons for the refusal.

In some cases, the claimant may object to the manner in which the offer was made or the interview was conducted.

> Example: If the employer conducted the interview or offered the job in an insulting or abusive manner, the claimant has good cause for refusal. To be good cause, the insult or abuse must be real and significant, and not merely undue sensitivity on the part of the claimant.
>
> Example: If the terms and conditions of hire are unclear or uncertain regarding significant points and the claimant is unable to obtain clarification, the claimant may have good cause for refusal. However, there is an issue if the claimant did not try to get clarification.
>
> Example: If the employer insists upon requirements that are unreasonable or irrelevant to the job, and the claimant attempts without success to have the employer modify them, the claimant has good cause for refusal. (*See* SW 265.2 Failure to Reach Agreement.)

265.4 Failure to Report to Work

A failure to report for work after acceptance of an offer is adjudicated under the same principles as a failure to report for an interview. See SW 265.1 Failure to Report for Interview.

265.5 Discharge or Leaving after Trial

For a discussion of separation after a trial period of employment, or payment for show-up time *see* VL 315.5 Discharge or Leaving after Trial.

Only where the claimant does no work and receives no wages is the issue properly one of work refusal. Adjudicate these cases under the reason for the refusal of the work.

> Example: The claimant reports for work but does not work or receive wages because the claimant finds, upon personal examination, that the conditions of work are unacceptable.

295 LENGTH OF UNEMPLOYMENT

Law: AS 23.20.385(b)

Regulation: 8 AAC 85.410(a)

8AAC 85.410, specifies that the director shall determine that work in a claimant's customary occupation or work that is outside of the claimant's customary occupation for which the claimant has the training and experience, to be suitable under AS 23.20.385(b) without regard to the claimant's length of unemployment.

A. No Good Prospects of Work in the Claimants Customary Occupation

Work outside the claimant's customary occupation that the claimant has the training and experience to perform is suitable.

B. Wage Restrictions

There is no set length of unemployment before a claimant is required to remove wage restrictions. However, the longer a claimant has been unemployed, the greater the expectation that wage restrictions will be removed.

> Example: In 75H-30, a claimant who had been unemployed 21 weeks, refused work because the rate of pay was lower than he had previously earned. In denying benefits, the Commissioner said, "I have consistently held that as a person's unemployment lengthens and he has no immediate prospects of obtaining employment in his customary occupation or to be placed at his highest skill in his locality, he is expected to remove restrictions on his overall availability and become available for more types of work or work of lesser skill or smaller pay."

Important considerations are whether the wage restrictions are reasonable based on the claimant's training and experience for the occupation and the length of the claimant's unemployment.

> Example: In 76A-1250, an iron worker who had been unemployed approximately one month refused referral to a position in his principal occupation, because he considered the rate of pay too low at $6.73 per hour. The claimant was a union member and the union scale for ironworkers in the locality was $11.15 per hour. The Tribunal held that the claimant refused a referral to work that was unsuitable for him at that time.

315 NEW WORK

The distinction between quitting existing employment and failing to accept new work is discussed in VL 315 Voluntary Leaving Vs. Refusal of New Work.

330 OFFER OF WORK

330.05 General

A. Contingent Offers

If the employer is prepared to offer work only if certain conditions outside the employer's and claimant's control are met, the offer is considered a contingent offer and there is no issue if the claimant refuses it. (*See* SW 330.25 Terms.)

Example: An offer of work that is contingent upon the employer's receiving a contract is a contingent offer. An offer of work that depends upon the claimant's having the tools customarily furnished by workers in the occupation is not a contingent offer.

B. Offer Made or Precluded

With the exception of those instances where the claimant precludes an offer, the offer must have been made so that the claimant knew and understood that an offer was being made and could therefore definitely accept or reject it. See the other categories under SW 330 for a discussion of genuineness, means of communication, terms, and withdrawal of offers of work.

1. Applications

Acceptance of an application, or an invitation to file an application, cannot be considered an offer of work, unless the filing of an application is simply a formality in connection with a bona fide offer that has already been made. Similarly, a claimant's request to have the application withdrawn, before any referral or interview with the employer, is not a refusal of work. It may, however, be a preclusion of work.

2. Union dispatch

A dispatch to work by a claimant's union, or an opportunity to bid on a job offered by the union, is considered an offer of work, since the union, in fulfilling its dispatch function, is considered the hiring agent of the employer.

C. Working on Call

1. Claimant fails to call for assignment

If the claimant is working on call and fails to call the employer for an assignment, there is not a suitable work issue, as no offer of work was made. There may, however, be an availability issue.

2. Claimant refuses same or similar work assignment

   If the claimant is working on call with an ongoing employer/employee relationship, and the claimant refuses an assignment to the same type of work that the claimant has been doing, this is not an offer of new work, and therefore it is not a suitable work issue. Again, there is a possibility of an availability issue.

3. Claimant refuses different work assignment

   If the claimant is working on call with an ongoing employer/employee relationship, and the claimant refuses an assignment to a distinctly different type of work from that the claimant has been doing, this is an offer of new work, and therefore there is a suitable work issue. Also there may be an availability issue.

4. Claimant requests not to be scheduled

   If a claimant is working on call for an employer and requests in advance not to be scheduled for a particular day, there is not a suitable work issue, both because it is not new work and because there is no showing that work would have been offered on that day. Again, there may be an availability issue.

   Example: A claimant (98 1954, September 30, 1998) was working on call and asked not to be scheduled for July 22. The Tribunal held there was no refusal of work issue as there was no indication that the claimant would have been scheduled to work that day.

330.15 Means of Communication

There is no issue if the offer of work was not communicated, unless the failure to communicate was due to the claimant's own fault or negligence. If there is a doubt that the claimant actually received and understood that a job offer was being made, resolve that doubt in favor of the claimant.

A valid offer of work may be made orally, in writing, by mail, telephone, telegram, fax, or e-mail, so long as the offer is clearly communicated to the claimant by the employer or an agent of the employer having authority to hire. A letter, telegram, fax, or e-mail is considered to have been properly delivered, unless the claimant can provide evidence that rebuts this presumption.

330.25 Terms

To be considered properly made, an offer of work must contain the necessary information concerning the job to determine its suitability. At a minimum, the claimant must be informed of job duties and location, and the hours, wages, and other conditions of the work. Information concerning necessary equipment and union requirements, if any, must also be provided. It may, however, be shown that since the claimant was already apprised of the terms of the employment, for example, at the time of referral, there was no need to repeat them at the time of the offer.

An offer of work conveyed so vaguely that the claimant is unaware of its terms or suitability cannot be considered an offer of suitable work.

330.3 Time

There is no issue if a claimant refuses an offer of work made at a time when the claimant is not in the labor market.

A. Claimant Not Filing

A claimant is not in the labor market during any week in which the claimant did not file a claim.

B. Claimant Employed

A claimant is not in the labor market when the claimant is fully employed.

C. Partial Unemployment

A claimant who is filing claims and working less than full-time, whether or not for the regular employer, is in the labor market. Such a claimant does not have good cause to refuse prospective employment solely on the grounds of partial employment.

However, a claimant who is working part-time for the regular employer, with definite prospects of returning to full-time work with that employer, is not required to accept part-time work that:

- conflicts with the hours of work for the regular employer,
- causes the total hours to be excessive, or
- prevents the claimant's returning to full-time work for the regular employer.

A claimant, who is working part-time, with no real prospects of returning to full-time work for that employer, must be available for suitable full-time work. In addition, the claimant must be willing to accept any part-time work that does not conflict with the current employment or cause the total hours of work to be excessive.

330.35 Withdrawal

There is no issue if an offer of work is withdrawn by the prospective employer unless the offer was withdrawn because of claimant fault or gross negligence. The same principles apply as in any other case of possible preclusion.

335 PREVIOUS EXPERIENCE WITH EMPLOYER

A. General

A claimant's prior history with an employer, whether from a previously refused referral or from previous employment, does not automatically grant good cause to refuse an offer of suitable work from this employer. Good cause for the refusal of the offered work is adjudicated on the same principles as apply to any other refusal of work. The fact that the claimant worked previously for the employer or refused work from the employer is in itself irrelevant.

Generally, if the same conditions are present, and those conditions were good cause for the claimant's previous refusal of work or voluntary separation from work, the claimant has good cause to refuse a later referral or offer of work. But the claimant is obligated to investigate to insure that this is in fact the case.

B. Offered Work Previously Refused

When a claimant refuses to apply for or accept a job, for whatever reason, and has previously refused the same job for the same reason, that reason should be carefully considered, and all factors of suitability weighed. Generally, other work to which the claimant does not object should be offered before offering previously refused work, whether or not the previous refusal was with good cause.

> Example: In AW-1040, a claimant refused referral to a position as a cook that paid $500 per month plus room and board for a 12-hour day and a seven-day week. The offered conditions were prevailing. The claimant had interviewed for the position a month earlier, at which time the employer had offered $300 a month with an increase to $500 a month when the business increased with the summer season. She refused the job at that time because the salary was too low for the number of hours she was expected to work. The Tribunal held that the claimant had refused a referral to suitable work without good cause. Regardless of the claimant's objection to the wage offered the month before, those conditions were not the same as those offered at the time of the second refusal.

C. Refusal of Offered Work from Former Employer

The claimant's prior history with the employer is generally irrelevant, provided that the offer of work is bona fide, and the employer needs the claimant's services. Neither quitting nor having been discharged gives good cause to refuse an offer of suitable work from a former employer. However, if the claimant's reason for leaving the work was with good cause and that reason still exists, the claimant has good cause to refuse further work with that employer.

> Example: A claimant (97 0595, April 9, 1997), had previously been hired by the employer. To accept the job, he flew to Yakutat where he was stranded for two days due to weather conditions. When the claimant

arrived at the worksite, the employer kept him there for a week, but had no work for him and so paid for his return to Anchorage. However, the employer did not reimburse him for his expenses en route to the worksite. The employer offered the claimant further work at the remote site, but would not pay the transportation costs to the site. In view of his previous experience with the employer, the hearing officer held the claimant had good cause to refuse the offered work.

363 PERSONAL APPEARANCE

A. General

On occasion, a claimant's personal appearance causes the withholding of an offer of work. In other cases, the claimant may object to the employer's personal appearance standards. As is the case with other employer requirements, the claimant's eligibility in these cases depends upon:

- The claimant's personal appearance as an indicator of the claimant's interest in becoming re-employed; and
- The reasonableness of the employer's standards.

B. Reasonableness of Employer's Requirements

Generally, an employer's standard or requirement is considered necessary to the business if noncompliance with the requirement would result in actual or potential monetary loss to the employer, or poses a safety problem. The requirement must be necessary to the particular duties of the claimant. The mere personal preference of an employer does not necessarily satisfy the requirements of reasonableness.

Example: A dress code appropriate to an employer's receptionist is not reasonable if required of employees who have no direct contact with the employer's clientele.

Example: In the case of Winter vs. State of Alaska (Alaska Superior Court, 3rd Judicial District, No. 72-6090, Dec. 20, 1973), the court commented on the reasonableness of a specific employer requirement. The case concerned a discharge for misconduct, but the court's opinion is applicable to employer requirements in general. In this case, the claimant was discharged because he refused to comply with a regulation that required that "hair should be kept trimmed, neatly combed, and off the collar and ears." The court held that the length of the claimant's hair in no way interfered with his duties as a seasonal park ranger, and there was therefore no compelling government interest necessitating the abridgement of the employee's right to fashion his own personal appearance.

C. Withholding of Offer or Referral

1. Referrals

The withholding of a referral by the employment office because, in the opinion of the interviewer, the claimant's personal appearance makes the claimant non-referable can be considered preclusion of work if:

- the claimant's personal appearance is within the control of the claimant;

- the claimant's personal appearance is known by the claimant to be a factor in the employer's evaluation;

- the standard of personal appearance is reasonable for the employer; and

- the claimant is given the opportunity to correct any deficiencies.

Further, a claimant who is not referable to any employer is not available for work. (*See* AA 363 Personal Appearance.)

2. Offers of work

Claimants must present themselves in the best possible way to prospective employers and conduct themselves in a way that shows they are interested in becoming re-employed. A claimant who by actions or attitude, including personal appearance, causes the withholding or withdrawal of an offer of employment has precluded an offer of work.

Generally, if the claimant's dress and manner show an obvious intent to discourage the employer from hiring the claimant:

- in light of what the claimant knows or should know concerning the employer's requirements and

- the customs of the occupation, and

- if those requirements are reasonably necessary to the conduct of the employer's business, the claimant has precluded an offer of work (provided, of course, the prospective employment is otherwise suitable). *See* SW 265.2 Failure to Reach Agreement.

D. Claimant's Objection to Employer's Requirements

A claimant who refuses otherwise suitable work, because of an objection to a reasonable employer requirement concerning appropriate dress and appearance, has refused an offer of suitable work without good cause.

365 PROSPECT OF OTHER WORK

A. General

A claimant's work prospects relate to the claimant's length of unemployment. In fact, the length of a claimant's unemployment is a good indicator of the claimant's work prospects.

B. Self-employment

Self-employment is not considered in determining prospects of other work, nor is self-employment considered in determining the length of the claimant's unemployment.

C. Good Prospects of Returning to Work

Generally, a claimant's prospects of returning to work are good if the claimant has a definite offer of work or a promise of recall from the claimant's former employer that begins within four weeks. Apply the four-week standard flexibly, depending upon the circumstances of each case. The claimant must show either a verbal or written promise of work with a definite starting date. In the case of seasonal work, if the general economic activity in the industry is favorable, and the claimant has a history of work in the claimant's customary occupation, then the claimant has good prospects of returning to work.

D. Work Prospects through Union

The work prospects of a union member are considered in the same manner as any other claimant. If the general economic activity in the industry is favorable, and the claimant has a history of work with the union in the industry, then the claimant has good prospects of returning to work.

A union member is often reluctant to take a short-term work dispatch, because the member rotates, upon return, to the bottom of the dispatch list. This may reduce the member's prospects of obtaining more permanent work in the future. In such a case consider the length of a union member's unemployment and the union member's prospects for obtaining permanent work through the union to determine whether there is good cause for the refusal.

> Example: A claimant who is a union member at the top of the union's D list refuses a dispatch to a two-week job. The job is suitable in every respect; however, if the claimant accepts it, the claimant will lose the position on the top of the list. There is no possibility for permanent work at the time of the claimant's refusal, and there are approximately 200 union members on the union's A list. In this case, the claimant's refusal of work is without good cause.

> Example: A claimant who is a union member ranked 35th on the union's A list refuses a dispatch to a two-week job. Although there are no dispatches to permanent jobs at the time, it is certain that there will be

approximately 75 union members dispatched from the union's A list to permanent jobs within 60 days. If the claimant accepts the short-term dispatch, the claimant will move to 250th on the union's A list. In this case, even though the claimant's prospects for permanent work are not immediate, the loss of the ranking on the A list would cause the claimant to be unemployed longer than if the claimant had not refused the two-week job. The claimant's refusal of work was with good cause.

Example: A claimant who is a union member ranked fifth on the union's B list and has been unemployed for 20 weeks, refuses a dispatch to a short-term job during the winter. Although the claimant has a chance of a dispatch to a more permanent job during the upcoming season, the claimant's work prospects are poor because of depressed economic activity in the industry. In this case, the claimant cannot show a loss of permanent employment prospects if the claimant accepts the short-term job, especially considering the claimant's length of unemployment. The claimant's refusal of work was without good cause.

450 TIME

450.05 General

A. General

Offered work is unsuitable on the basis of the time factors, such as work schedule, hours, and the like, only if:

- the time factor is not prevailing; and
- it is substantially less favorable to the worker than that prevailing for similar work in the locality.

The fact that any condition of work, including hours, is not prevailing does not necessarily make the work unsuitable, nor does the inconvenience of the hours of work schedule provide good cause for refusal. Substantially less favorable in this case means economically less favorable, or dangerous to health or morals, rather than merely less convenient.

The factor of time may give a claimant good cause for refusal even where the work is suitable. Objections to the hours of offered work usually are related to some personal objection such as health, domestic circumstances, conscientious objection, and the like. These other factors determine whether there is good cause for the refusal.

B. Days of the Week

A claimant may refuse employment based on an objection to, or insistence upon, working particular days of the week. Or the claimant may object to the total number of workdays in the week. The principles used in adjudicating any time issue apply here. Days of work are not unsuitable solely because they are not prevailing.

> Example: The fact that a position has Wednesdays and Thursdays off, rather than Saturday and Sunday, does not make the work unsuitable, unless it causes the work to be unfavorable to the claimant from an economic or moral point of view.

On the other hand, the scheduled workweek may affect a claimant adversely even where the total hours of work in the week are prevailing. For example, if most workers in the occupation work a 40-hour week on the basis of five eight-hour days with Saturday and Sunday off, an arrangement where the worker has to work in five seven-hour days and five hours on Saturday may be substantially less favorable to the worker than that prevailing, because it leaves only one day a week free, even though the total hours are no longer than those of most workers.

Once it is established that the work is suitable, it must be determined whether the claimant's objections are good cause for refusal. Generally, good cause is found only where the claimant has a compelling personal reason for refusal on the basis of the work schedule, or where the work schedule, although prevailing, materially disadvantages the claimant. Mere inconvenience does not establish good cause. In doubtful cases, the claimant's work history, the claimant's work prospects under the restrictions imposed, and the length of the claimant's unemployment, determine good cause or its lack.

C. Hours

1. General

Hours are nearly as important as wages in determining the conditions of offered work. Together with the wage rate and method of payment, they determine a worker's total earnings. By themselves, they determine the time the worker must spend on the job and the time the worker has for personal use.

Hours of offered work are not unsuitable merely because they are unusual. The hours must cause an actual or potential material disadvantage to the claimant before they are unsuitable. The disadvantage may be monetary, moral, or health-related. There is good cause for refusing suitable work on the basis of hours only if the claimant has a compelling personal reason.

2. Wage and Hour Laws

Any work is unsuitable which requires hours prohibited by law.

a. Federal law

There are a variety of federal standards that specify the legal hours of work in certain occupations, especially hazardous occupations and those involved in interstate commerce, such as pilots, truck drivers, and the like. If the hours of work are in violation of labor law, the work is unsuitable. For a discussion of these hours, see the UIPM.

b. Alaska law

The applicable standards are contained in the Alaska Wage and Hour Act and other provisions of AS 23.10.

The Wage and Hour Act requires an employer who employs any person:

- for longer than 40 hours per week, or
- for more than eight hours per day,
- to pay for the overtime hours at the rate of one and one-half times the regular rate of pay, unless the employer or the occupation is exempted from this requirement by the Act. No employer is prohibited from requiring overtime work

3. Prevailing standard

Work is not suitable if the hours of offered work are substantially less favorable to the worker than those prevailing for similar work in the locality. The phrase "substantially less favorable" does not include differences that are "minor or technical or would have no adverse effect on the claimant."

Where the alleged disadvantage is related to health, safety or morals, the question of "substantially less favorable" becomes even more difficult. As a general rule, hours that are merely inconvenient are not unsuitable for that reason alone.

No hours, no matter how unusual, are inherently unsuitable. In the case of hours unusual for the occupation the disadvantages may be subjective.

> Example: One claimant may object to working even one hour overtime per day, because it interferes with the time the claimant wishes to spend with family. Another claimant may object to working short hours or even insist upon overtime, since short hours or lack of overtime reduce wages to an unacceptable level.

4. Long or short hours

Objections to long or short hours are often substantially the same as those associated with part-time or full-time work. *See* SW 450.4 Part-time or Full-time, for further discussion of part-time or full-time work.

Work is unsuitable if it requires that the claimant work hours significantly more than the hours prevailing, unless the extension of the hours is offset by overtime pay or some other advantage. Hours greatly in excess of those prevailing are unsuitable, regardless of the overtime pay. In addition, where the hours cause or exacerbate a health problem, the work is unsuitable.

Where the hours are less than full-time, the work is not necessarily unsuitable, so long as the hourly rate is prevailing and the hours of work do not prevent the claimant from seeking full-time work.

5. Overtime

For a discussion of when overtime is or is not legally required to be paid, see the UIPM. No work is suitable that requires the employee to work unpaid overtime, if it is legally required that overtime be paid.

a. General

Work is not necessarily unsuitable merely because it does or does not require overtime. A refusal because of an objection to properly compensated overtime work is usually without good cause unless:

- The overtime requirement is a more or less permanent condition of the prospective work and requires hours substantially in excess of those prevailing; or

- The claimant has some compelling personal reason for refusing overtime work, even though the amount of overtime required by the prospective employment is customary and prevailing in the occupation.

b. Amount of overtime required

The actual amount of overtime required, and the claimant's personal obligations and work prospects, all help to determine whether the claimant is refusing unsuitable work based on overtime alone. A claimant with no prospects of work and no clear obligations that interfere with overtime work has little basis for refusing prospective work requiring overtime. A claimant with child care obligations or good work prospects may have good cause for refusing even one hour per day of overtime.

Where the overtime is clearly excessive, in relation to the customary practices of the occupation, the employment is unsuitable. Work that leaves a claimant significantly less time for personal use, as compared with other similar work in the locality, is unsuitable.

c. Lack of overtime

Lack of overtime does not of itself make work unsuitable. In occupations or localities where lengthy periods of overtime are the prevailing condition, the fact that a job does not entail overtime may

reduce the weekly wage to a level substantially below prevailing. A claimant may show such work to be unsuitable only if the claimant is clearly prevented by the hours or other circumstances of the prospective employment from obtaining more remunerative work.

Example: If the normal union hours in a given locality are six ten-hour days, a worker who accepted a dispatch for a position with a work week of five eight-hour days could be prevented during the period of employment from accepting other work, or even being dispatched. Such a claimant may successfully contend that the "wages, hours and other conditions" of the offered work are substantially less favorable than those prevailing for similar work in the locality. In such cases, it must be clearly shown that the objectionable work week is not the prevailing one, and that the claimant is prevented from obtaining other work by accepting the work.

6. Shift

Prospective employment is not unsuitable merely because it requires shift work. Even if a particular shift is unusual for the occupation it is not unsuitable for that reason alone.

Personal circumstances may provide good cause for refusing otherwise suitable work because of the shift required. The two most obvious circumstances that may provide good cause are genuine child-care problems and transportation difficulties. A claimant who is cannot get adequate child care at a reasonable cost during the hours required by a particular shift has good cause to refuse the prospective work. Transportation difficulties give good cause for refusal if:

- there is a genuine unavailability of transportation, as where public transportation is unavailable after certain hours, or

- where the cost of transportation, for example, in the case of split-shift work, is disproportionate to the wage to be expected from the prospective employment.

- Objections to shift work on the basis of health, safety, and morals must be examined carefully.

  Example: A claimant's contention of inability to sleep during certain hours of the day is generally not good cause for refusing shift work, unless there is a medical problem preventing the claimant from getting proper rest.

The fact that one shift may be less convenient does not generally provide good cause for refusing work. A claimant's desire to harmonize shift work with that of a spouse, or to spend time with the family at certain hours, is not a sufficiently compelling reason to reject employment.

D. Irregular Employment

The fact that prospective employment is irregular does not make it unsuitable. There is good cause for refusing irregular work only if the claimant has a compelling reason, personal or otherwise, for refusing such employment.

450.4 Part-time or Full-time

A. Refusal of Part-time Work

Work is not unsuitable merely because it is part-time. **So long as the basic wage is prevailing**, whether figured by the hour, by the piece, or on some other basis, the employment is not necessarily unsuitable merely because the weekly wage is lower than prevailing. A claimant employed part-time generally has enough time outside working hours to look for better-paying or full-time employment.

However, a claimant has good cause to refuse part-time work if accepting it prevents seeking or accepting full-time work where there is clear evidence that the hours prevent any reasonable work search.

> Example: A claimant (97 1129, June 4, 1997) was offered an opportunity to interview for a 30 hour-per-week job at an unknown rate of pay. She refused the offered interview because it would not give her time to look for full-time work in her professional field. She had not worked in five months, except for a ten-day temporary registration assistant in January. The Tribunal, in finding that she had precluded without good cause an offer of suitable work, held that there was no showing that she was prevented from continuing to seek work in her profession.

In other cases, the expense of accepting part-time work may outweigh the wage expected, such as excessive transportation and child care expenses. This is generally only true where the work involves split shifts or is outside the claimant's usual commuting range; in other cases the question of availability must be addressed.

B. Refusal of Full-time Work

"Full-time work" means the normal workweek in the claimant's occupation in the locality, generally not more than an average of 40 hours per week. A claimant who refuses work simply because it is full-time is generally denied benefits, unless the claimant has a compelling reason. There are circumstances that could provide good cause, for example the inability to secure child-care during full-time hours, or reasons of health.

However, a claimant who is unable or unwilling to work full-time is not available for work. *See* AA 450.4 Part-time or Full-time.

C. Partial Employment

A partially-employed claimant may refuse to work on a particular day, when requested to do so by the employer, even though the claimant does not intend to sever employment altogether. This happens when on-call workers turn down a particular shift or other short-term assignment. If the claimant is on an indefinite

layoff at the time of the request, there is a work refusal issue in such circumstances that is adjudicated under the same principles as any other refusal of part-time or temporary work. If the claimant is refusing a regular assignment, there is not a suitable work issue. In both cases there is an A&A issue.

450.45 Seasonal

A. Off-Season Work Refusal by a Seasonally-Employed Claimant

In some cases, a seasonally-employed claimant may refuse suitable work with good cause during the off-season because of the claimant's preference for seasonal work or the claimant's attachment to a particular seasonal employer.

For seasonal claimants, good prospects means in the next season as long as it is within 45 days. If the general economic activity in the industry is favorable for the next season, and the claimant has a history of seasonal work, then the claimant is likely to return to work in the next season and therefore has good prospects of returning to work.

1. Work refusal of part-time or temporary work

A seasonally-employed claimant's refusal of suitable part-time or temporary work during the claimant's off-season is without good cause, unless the work prevents the claimant from accepting full-time work or returning to work with the claimant's regular employer in the near future.

2. Work refusal of permanent work

A seasonally-employed claimant's refusal of suitable permanent work during the claimant's off-season may be without good cause, even though the work interferes with the claimant's return to seasonal work. A claimant employed on a seasonal basis cannot always restrict work preferences to a seasonal occupation or employer, if the claimant has an opportunity to obtain permanent work. An adjudicator must examine the claimant's refusal of permanent work in light of:

a. Regularity of a claimant's seasonal employment

A seasonally-employed claimant who is unemployed only one or two months per year has better cause to refuse other prospective permanent employment than a seasonally employed claimant who is unemployed for six months out of each year. Consider:

- the claimant's seniority with the seasonal employer,
- the amount of full-time work provided by the seasonal employer,
- the amount of training that the claimant has in the occupation, and
- the claimant's ability to perform the prospective permanent work.

b. Stability and earnings of the offered permanent work

The prospective permanent work must offer a definite advantage to the seasonally-employed claimant, as compared to the claimant's seasonal work. A seasonally employed claimant may refuse suitable permanent work with good cause that entails a definite risk of layoff for any reason, or that does not offer a significant earnings advantage to the claimant in comparison to the claimant's seasonal employment earnings.

c. Claimant's prospects in the seasonal occupation

A seasonally-employed claimant scheduled to begin work in the next 45 days cause to refuse prospective permanent work than a claimant recently terminated from seasonal work. The claimant would not conceal the intention to return to the claimant's regular seasonal employment from a prospective employer. However, the claimant would determine whether the employer can alter the terms of the prospective permanent employment so that the claimant may accept it without interfering with the claimant's return to seasonal employment.

B. Claimant's Objection to Seasonal Work

A claimant does not have good cause to refuse suitable work solely on the basis that the work is seasonal, unless the work prevents the claimant from accepting full-time work or returning to work with the claimant's regular employer in the next 45 days.

450.55 Temporary

A. General

The fact that a position is temporary does not make it unsuitable for that reason alone.

In some situations, temporary workers do not receive the same wages, fringe benefits, or other advantageous working conditions as permanent workers, even where the temporary worker does the same work as the permanent employee. The claimant may contend that the wages, hours and other conditions of such temporary work are substantially less favorable than the conditions prevailing in the occupation. But where a distinction between temporary and permanent employees is the prevailing condition, the distinction is based on whether the temporary employment compares favorably with other **temporary** employment in the occupation. Where the working conditions of a given temporary position accord with what is prevailing in the occupation, the work is suitable, even if the conditions are less than those prevailing in the majority of **all** employment (temporary and permanent) in the occupation (80H-184).

B. Good Cause

Although temporary work is not intrinsically unsuitable, a claimant may show good cause for refusing a temporary position if:

1. **The acceptance of temporary work precludes the claimant from returning to full-time work with the regular employer.** Although a claimant has good cause to refuse work which conflicts with an attachment to the claimant's regular job, the claimant is expected to inquire as to whether the terms of the work can be arranged so as not to conflict with the regular employment.

2. **The acceptance of the temporary work precludes the claimant from obtaining full-time work that the claimant has good prospects of obtaining.** The claimant's work prospects must be real, and the claimant must make certain that acceptance of the offered work precludes obtaining the prospective work.

   Example: In AW-746, a claimant whose primary occupation was that of meat wrapper refused a referral to a temporary job of one week's duration. She contended that she had a promise of permanent work and that accepting any temporary or part-time work jeopardized her chances for this employment. At the time of the referral, the claimant had worked only three days in the preceding four months for that employer and did not know when she would be hired on a permanent basis. The Tribunal held that the claimant's prospects for permanent work were so nebulous as to preclude good cause for refusing the available work.

Example: In AW-2564, a claimant refused a position as a bookkeeper at a remote mine. The job was expected to last for two months, concluding sometime in September. Although the claimant had no prospects of other employment at the time of the refusal, he felt that it was harder to find other work in September than in the summer, and therefore the offered position interfered with his search for work. The Tribunal held that the claimant had not supplied a compelling reason for refusing available work.

Union-registered claimants may at times refuse "short calls," because acceptance of a short-term dispatch moves the claimant to the bottom of the dispatch list and preclude obtaining more permanent work in the near future. A union claimant has good cause to turn down a short-term dispatch only if acceptance of the short call will actually cause the loss of the position on the list, and the worker has genuine prospects of more permanent work that is jeopardized by the loss of position on the list. (For a further discussion of refusals of short-term dispatches by union members, *see* SW 365.E Work Prospects Through Union.)

3. Acceptance of the prospective temporary employment involves expenditures (such as for equipment or union dues) which are disproportionate to the pay for the temporary employment.

Example: A claimant who is required to purchase an expensive uniform to perform a temporary job of three days has good cause to refuse the employment, if the uniform is not a requirement in the claimant's regular occupation and has no material significance for the claimant's availability.

C. Restriction to Temporary Work

If a claimant refuses to accept any work except temporary work, the claimant has good cause only if the claimant's reason for so doing is compelling.

Example: A claimant (98 1272, June 25, 1998) refused an offer of suitable work because he needed to attend training in pursuit of self-employment. He planned to begin his self-employment in four to six weeks and was only available for temporary employment. In finding that Mr. Perry had refused suitable work without good cause, the Tribunal held that, "Restrictions to the labor market because of self-employment are without good cause."

Example: A claimant who restricts prospective employment to temporary work in order to attend approved training has compelling reasons; a claimant who restricts employment to attend academic classes does not have compelling reasons.

475 UNION RELATIONS

Law: AS 23.20.385(a)(3)

A. Requirement to Join Company Union

Work is not considered suitable if the individual is required to join a company union. However, company unions are seldom, if ever, found. They are labor organizations that are under the control of management and so are not free from interference, restraint, or coercion by the employer. The existence of a company union at the place of employment does not make the prospective work unsuitable, unless membership in such a union is a condition of employment.

B. Requirement to Resign from or Refrain from Joining a Labor Organization

A bona fide labor organization is any organization of workers banded together for the purpose of:

- promoting their own interests in matters relating to wages, hours, and working conditions;
- bargaining with an employer or employers;
- settling grievances;
- establishing disciplinary controls for the benefit of all members; and
- assuring the welfare of members and their families.

Under present conditions, employers seldom if ever require an employee to give up union membership. If an employer requires, as a condition of hire, that the worker resign from or refrain from joining a bona fide labor organization, the position is unsuitable. A requirement to forfeit union membership usually occurs, not as an employer requirement, but because of union rules against "dual unionism." A claimant may therefore object to prospective employment because it requires the claimant to give up the claimant's regular union affiliation and join a new union.

1. If membership of the union associated with the prospective employment requires only a temporary withdrawal from the claimant's regular union, with which the claimant has the right of reinstatement, the prospective employment is not unsuitable, and there is not good cause for refusing the new employment on this ground.

2. If the union associated with the prospective employment requires the claimant to abandon membership in the claimant's regular union, then the work is unsuitable.

3. If the union associated with the prospective employment does not require the claimant to abandon current union affiliation, but the claimant's regular union would subject the claimant to discipline or expulsion, the prospective employment is nevertheless not unsuitable on that basis alone. However, the claimant has good cause to refuse the prospective employment if disciplinary action by the claimant's regular union is a probable rather than merely a possible consequence of accepting the new work, and forfeiture of membership in the claimant's regular union harms future employment prospects. The claimant must attempt to obtain the permission of the regular union to perform the new work, unless such an attempt is a futile gesture.

C. Requirement to Join a Labor Organization

Prospective employment that requires the claimant to join a labor organization is not unsuitable for that reason. However, good cause may be shown for refusing such work if the claimant has, for example, a genuine conscientious objection to joining a labor organization, that meets the standards set out in SW 90. In other cases, a claimant may show good cause if the claimant is unable, after making a genuine effort, to meet the membership requirements of the union involved. The cost of union membership may also provide good cause if the claimant is unable to pay the union initiation fee and is unable to arrange for deferred payment of the fee, or the temporary nature of the job makes the cost of the membership fee unreasonable.

D. Nonunion Employment

The fact that prospective employment is non-union alone does not make it unsuitable. Objections to non-union work are often based on objections to the wages, hours, or other conditions of work, rather than to the non-union status of the employment itself. In areas where the majority of employment in the occupation is covered by union contract, non-union employment may well be unsuitable. But where non-union hours, wages, and other conditions are prevailing, a claimant cannot long insist upon union scale to the exclusion of the prevailing conditions.

Although an exemption from work registration may be granted to a claimant who has registered for work with a union having a referral agreement with the division, this exemption applies to the claimant's work registration only; it does not necessarily mean that non-union work is unsuitable for the claimant.

A union member who refuses otherwise suitable non-union work refuses without good cause if the claimant's work prospects through the union are not good and the union would not discipline the worker for accepting such work. A penalty imposed by claimant's union for accepting non-union work, as opposed to an employer requirement that a claimant give up union membership, does not make the prospective work unsuitable. A union member may, however, show good cause for refusing non-union employment if discipline or expulsion by the union is probable, and such action on the part of the union adversely affects the

claimant's work prospects. Where it is clear that a union reprisal has no adverse effect on the claimant's work prospects, the claimant cannot establish good cause on that basis alone.

Example: In AW-682, a claimant who had been unemployed for five months was referred to a civil service job within her regular work classification. She refused the position because the wage was below union scale, although she was in default with her union and could not be dispatched. The Tribunal held that the claimant had refused, without good cause, a referral to suitable work.

Example: In 77H-319, a union member who had voluntarily registered with the employment service refused a referral to temporary non-union employment. The Commissioner held that a refusal of otherwise suitable work based solely on the fact that the claimant was a union member and the offered work was non-union, was without good cause. In view of the claimant's minimal prospects through her union, the temporary non-union work was considered suitable for her.

E. Offer in Violation in Union Rule or Contract

1. Union hiring rule

An offer of union employment that is made in violation of established union rules and procedures is not a proper offer of work.

Example: In 254, a claimant was found eligible when he turned down, through his business agent, an offer of employment which was made outside established union procedures. Under the terms of the labor agreement in force, when the employer wanted a specific worker, he was required to first reject all those higher on the dispatch list. Since the employer failed to follow this hiring routine, it was held that the claimant had not received a proper offer of work.

2. Working conditions in violation of labor agreement

If the hours, wages, or other conditions of a prospective job do not meet the terms of the collective bargaining agreement in force at the place of employment, it is not suitable work.

480 VACANT DUE TO A LABOR DISPUTE

A position "vacant due directly to a strike, lockout, or other labor dispute" is any position that is open:

1. Because it is held by a worker who is participating in the dispute or whose work is so integrated with that of workers participating in the dispute that the worker cannot continue work as long as the participants in the dispute are not working;

2. Because it is held by a worker who is not permitted to work by those participating in the dispute; or

3. As the result of a reorganization of jobs or creation of new jobs in the establishment because of the labor dispute.

A position open behind a picket line is presumed to be vacant due to a labor dispute. This presumption may be rebutted by specific evidence, obtained from the employer, which shows that the position is not vacant due to the dispute.

500 WAGES

500.05 General

A. Suitability of Wages

1. Prevailing standard

Work is not suitable if the wages offered are substantially less favorable to the worker than those prevailing for similar work in the locality. Wages are considered "substantially less favorable" than those prevailing if the difference between the offered rate and the prevailing rate is 10 percent or more.

> Example: In 78H-217, the claimant was found eligible when she refused, after a lengthy period of unemployment, a non-union job as a kitchen helper which paid $1.35 less per hour than the prevailing (union) wage for that occupation. The Commissioner said, "[I]t does not matter that the claimant had been unemployed for 33 weeks or that the employer involved signed a union agreement two months later, etc., because the job to which the employment service sought to refer [the claimant] was not suitable work."

2. Claimant's circumstances

In addition, a claimant's prior training and experience, prior earnings, length of unemployment, and work prospects also determine the suitability of a particular wage for that claimant. A suitable wage is one that is prevailing for the occupation and locality and, in addition, is suitable for that particular claimant in relation to the claimant's qualifications, circumstances, and prospects. A position that pays the prevailing wage may nevertheless be unsuitable for a claimant who has recently earned substantially more and who has good prospects of obtaining the wage the claimant desires.

B. Wages

1. Hourly rate versus total wages

Most workers are employed at a specific hourly rate. Therefore, wages usually means the hourly rate of wages. Some professional or managerial workers may be employed at a monthly or yearly salary. Where payment of a weekly, monthly, or yearly wage is the prevailing condition in the occupation, the total weekly, monthly or yearly wage is the basis for comparing the wages of similar work.

2. Fringe benefits

Fringe benefits are, in most cases, not be included as wages. The payment made by an employer for retirement, sickness, hospitalization, or life insurance is specifically excluded from the definition of wages and is not considered in computing the wages of prospective work. However, some employee benefits may be counted as wages if an actual monetary value is assigned to the benefit, and the employee receives the benefit on a regular basis. Bonuses and premiums may be part of the wages, if they conform to the above requirement. Any benefit that is not guaranteed to the employee is not wages.

3. Hours

Since the prevailing rate is based on the hourly rate, the number of hours worked does not affect whether or not the wage is prevailing. A wage is not less than prevailing merely because the hours of work are less than full-time. And, on the other hand, a wage cannot be raised to prevailing by adding guaranteed overtime to it. A shift differential, however, can be taken into account in determining the hourly rate.

4. Method of payment

If wages are paid on a piece-rate or commission basis, with or without a guaranteed minimum or hourly wage, the method of payment should be taken into account in determining the wage. Generally, so long as the amount of payment is prevailing, the method of payment does not make the work unsuitable. Where piece-rate or commission earnings are not prevailing, payment may make the prospective wage so speculative as to be unsuitable. *See* SW 500.65 Piece Rate, Commission Basis, or other Method of Computation, for a further discussion of this topic.

5. Tips and gratuities

Tips and gratuities cannot supplement a substandard wage to make it suitable. Such income is purely speculative and is not to be considered in determining the wages of offered work.

500.15 Apprenticeship or Beginning Wage

A. General

A refusal of prospective work on the basis that it pays the beginning or apprenticeship wage always raises a question of suitability, both with respect to the prevailing standard and in light of the claimant's training and experience. A claimant is not required to accept work that pays wages substantially less than prevailing, or that is unsuitable for the claimant in relation to the claimant's background and current circumstances.

B. Union Wages: Apprentice vs. Journeyman

In most union trades, jobs are separated into learner, apprenticeship, and journeyman classes. These classes are distinct in terms of the skills, abilities, and knowledge required, as well as in job duties. Apprentice wages are not comparable to journeyman wages, nor may the classes be lumped together in determining the prevailing rate for the occupation. In almost all trades with an apprenticeship program, journeymen are not permitted to work at apprentice wages. Therefore, an apprentice position is generally unsuitable for a journeyman.

A different problem arises where a journeyman is offered a position in another craft or trade that requires starting at a trainee or apprenticeship position. Generally, a refusal in such cases is with good cause. However, where the claimant's work prospects are non-existent, the claimant is expected to take a trainee wage in a new field.

C. Progressive Wage Scales

In many businesses, workers are paid on the basis of progressive wage scales. Inexperienced workers are hired at a minimum entrance rate and their wages increase over time. Where progressive wage scales prevail, workers cannot normally expect to be hired at the wages currently being paid the greater number currently employed in the occupation, because many of these employed have received periodic increases based on the length of time they have worked in the same business. Accordingly, the determination of whether the wages offered are prevailing is generally made on the basis of the prevailing wage scale. Determination of the prevailing **wage scale** involves consideration of :

- the prevailing entrance rate;
- the basis on which the rates are increased; and
- the amount and frequency of the increases.

Example: In an occupation and locality where rate increases are based on length of service alone, and new employees are almost always hired at the entrance rate, an offer of work at the prevailing entrance rate is

suitable, as most of the workers in the occupation are hired on the same basis.

In some occupations not all workers are hired at the entrance rate, and a worker with experience can expect to be hired at more than this rate. In such cases, an offer of work at the minimum entrance rate could be substantially less favorable than that prevailing for a worker who has formerly earned a rate above the minimum. The claimant's length of unemployment, work prospects, and the claimant's training and experience must be considered in determining the suitability of beginning or apprenticeship wages in such cases.

500.25 Expenses Incidental to Job

Expenses incidental to the job are such items as special clothing, tools, or housing that any worker has to pay in order to work in a given job. Personal expenses such as transportation or childcare, which only some persons might have in order to work, are not considered expenses incidental to the job. For cases where the claimant objects to the expense of travel or commuting, *see* SW 150.05 Area of Residence. For objections based on the expense of childcare, *see* SW 155.1 Care of Children or Others.

The fact that prospective employment requires certain expenditures does not necessarily make it unsuitable or provide good cause for its refusal. Each case must be examined in light of the customs of the occupation; whether the cost is disproportionate to the permanence and pay of the offered work; and the claimant's ability to meet the expenditure. An expenditure that is unreasonable or not customary, or which the claimant is unable to meet, may provide good cause for refusal.

Where the expense is caused by an employer requirement, as for equipment, uniforms, and the like, *see* SW 180 Equipment.

500.35 Former Rate

A. General

AS 23.20.385(b) requires the division to consider a claimant's prior earnings in determining suitability of work and good cause for refusal. For a reasonable period of time, claimants may restrict themselves to a wage no greater than the wage they have earned over a significant period of time in a labor market comparable to that in which they are currently offering their services.

Example: A claimant (98 1767, August 31, 1998) had quit her job as a collections agent after seven months because she was unhappy with her lack of a raise. She had not worked for five years previously. While visiting a friend at her former place of employment, she was offered a job by the manager at her former rate of pay. She refused the offer. In denying benefits, the Tribunal held that she could not demand a higher rate of pay than she had earned at her last employment, since that job did pay above the prevailing rate.

B. Reasonable Period

For a discussion of a reasonable period of time, *see* SW 295. D. Reasonable Period for Wage Restrictions.

C. Period of Time Employed at Desired Wage

In order to be considered a "former rate," a claimant's desired wage:

- must have been earned over a significant period of time;
- within the two to three years prior to filing a claim;
- earned in the occupation in which the claimant is now seeking work.

A wage which was earned for only a short period of time prior to the claimant's unemployment, or which was earned in an occupation or job classification to which the claimant is not entitled to be restricted, cannot be considered the claimant's former rate.

D. Labor Market Changes

A claimant who has moved from a high wage area to an area in which wages are depressed cannot expect to earn as much in this current labor market as the claimant did in the former one. In such a case, the claimant's former rate must be adjusted downward to reflect the amount the claimant can hope to earn with the claimant's training and experience in the current labor market.

Conversely, the claimant who has moved from a low wage area to an area to where the claimant's skills are in demand, and higher wages are paid, may expect to earn considerably more than the prior rate and may ask for a wage

higher than previously earned, so long as the claimant is qualified by training and experience to demand that wage in the current labor market.

In some cases, a claimant may be forced to change the occupation in which the claimant is seeking work. In such cases, the claimant's former rate is irrelevant, and the claimant must accept the prevailing wage for the current occupation.

E. Former Rate vs. Prevailing Rate

The prevailing rate is usually an average of the rates paid in a particular occupation and may be considerably less than a particular claimant's former rate. Claimants whose training and experience qualify a demand for a wage higher than that prevailing may restrict themselves to the former rate of pay for a reasonable period of time, if the wage they are demanding is actually paid in the current labor market. However, there comes a point in any extended period of unemployment when a claimant must accept the prevailing wage.

500.45 Living Wage, Low Wage, Minimum Wage, Comparison with Benefit Amount or Prevailing Wage

A. Living Wage

The fact that prospective employment pays less than what the claimant considers to be a "living wage" does not make the work unsuitable or provide good cause for refusal. Suitability of work with respect to wages must be determined according to the wages prevailing in the occupation and locality, and the claimant's prior earnings and work prospects.

Example: In 78H-135, the Commissioner stated, "Living expenses are a matter peculiar to each individual and fluctuate subjectively in response to the individual's standard of living, obligations, health, etc. Such factors do not, however, transfer or impose any obligation upon employers to offer a higher wage. The wage offered for a job may be considered unsuitable and afford good cause for refusal only when the wage offered is substantially below that which prevails for similar work in the area or where the individual has reasonable prospects in the near future of securing work in keeping with a higher prior earning experience.

B. Low Wage

An objection based solely on the fact that the wage of offered work is too low does not make the work unsuitable or provide good cause for refusal. However, any contention that the wage of offered work is too low raises a definite suitability question.

C. Minimum Wage

Work paying below the applicable state or federal minimum wage is unsuitable.

Minimum wage rates for employment in Alaska are explained in the UIPM.

If the refusal of work occurs in a state other than Alaska, the minimum wage law of that state is applicable. If there is both a state and a federal minimum wage, the higher of the two is applicable.

D. Comparison with Benefit Amount

Suitability of work must be determined without regard to the amount of benefits for which the claimant is eligible. Good cause is never established for refusing work because of its effect on, or relation to, the benefit amount.

E. Prevailing Rate

The prevailing rate is the rate that applies to the largest number of workers doing similar work in the locality. If it is numerical, it is a single figure, not a range. For a description of how to calculate the prevailing rate, see VL 500.45.E. Prevailing Rate.

It is not correct to establish one prevailing rate for union employment and another for nonunion employment. If the union rate predominates over all others, it is the prevailing rate for the occupation. If no single rate pre-dominates the total of union and non-union, employment must be averaged to determine the prevailing rate.

500.65 Piece Rate, Commission Basis, or other Method of Computation

The fact that workers are paid on a piece-rate or commission basis does not make prospective work unsuitable. As a general rule, if the pay is prevailing, regardless of the method of payment, then the wage is suitable. However, AS 23.10.065 requires a prospective employer to guarantee the applicable minimum hourly rate, regardless of the method of payment.

If piece-rate or commission wages are the prevailing method of payment in the occupation, and the claimant's training, experience, and ability indicate that the claimant could probably earn the prevailing wage in the prospective employment, then the wage is suitable. However, where piece-rate or commission payments are not the prevailing method of payment, work offered under these terms is unsuitable, unless it can clearly be shown that the claimant's earnings would not be substantially less than prevailing. Where the expected wage is conjectural or speculative, the work is unsuitable.

> Example: Where the prevailing wage is a monthly salary of $1050, employment at a straight piece-rate is not suitable, because there is no guarantee that a worker would make the prevailing wage. However, if piece-rate payment is offered in addition to a guaranteed wage of $950 per month the wage is suitable, since $950 is not substantially less than the prevailing rate of $1050.

Where piece-rate or commission wages are a significant part of the wages customarily paid in the occupation, then the lack of commission or piece-rate earnings makes prospective work unsuitable if the wage is substantially less than prevailing.

> Example: If the prevailing wage for a particular sales occupation is $6 per hour plus a 30% commission, and workers in the occupation is expected to earn the equivalent of $2.50 per hour over and above the hourly rate on the basis of commission sales, then an offer of $7 per hour with no commission is unsuitable.

510 NATURE OF WORK

A. General

Any offer of work is unsuitable if the wages, hours, or other conditions are substantially less favorable than those prevailing for similar work in the locality. **"Conditions of work" refers to the provisions of the employment agreement, both express and implied, and the physical conditions under which the work is done under that agreement.** The subcategories within SW 515 cover the more common factors, although there are other factors that may be important in certain occupations and localities.

For a discussion of wages, *see* SW 500 Wages. For hours, *see* SW 450 Time.

B. Claimant's Desire to Change Occupation

If a claimant's customary occupation is no longer suitable because of changes to the claimant's health, or another compelling reason, then the claimant has good cause to refuse the offered work. Otherwise, a claimant who refuses suitable work in the claimant's customary occupation because the claimant no longer desires to work in that occupation does so without good cause.

C. Legal Prohibition

If the law prohibits the claimant from working in an occupation, then the work is unsuitable.

515 WORKING CONDITIONS

515.05 General

As a general rule, a condition of work that is merely unusual does not make the work unsuitable. Although the disadvantages of non-prevailing wages, and, to a lesser extent, unusual hours, may be obvious, the disadvantages of unusual conditions other than wages and hours are often not so easily identified. A condition of work is not substantially less favorable to a claimant 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." In most cases, a condition of offered work is substantially less favorable only if it causes an actual economic disadvantage to the claimant, or is a danger to the claimant's health, safety, or morals.

515.1 Opportunity for Advancement

In most cases, a lack of opportunity for job or personal advancement does not provide good cause for refusing otherwise suitable work. A worker's desire to accept employment only with a "future" is not a compelling reason for refusal of work.

In some cases, a claimant may refuse a position outside the claimant's principal occupation because acceptance of the job precludes advancement elsewhere in the future. As with any refusal of a position not in a claimant's usual occupation, a careful review of the claimant's training and experience, length of unemployment, and work prospects is necessary to determine the suitability of the offered employment.

515.2 Employee Benefits

A. General

Most employment offers fringe benefits such as medical insurance, paid sick and annual leave, holiday pay, and retirement benefits. These fringe benefits generally have less effect on suitability than the more concrete conditions of work such as wages, hours, and working conditions affecting health and safety. In addition, it is often difficult to assign a value to various fringe benefits, and their impact on the suitability of the work varies with a claimant's circumstances.

Generally, a minor variation in fringe benefits from those prevailing does not make the work unsuitable. However, the absence of all or a large part of the fringe benefits customary to the occupation make the work unsuitable, if the absence of the benefits affect the claimant adversely.

B. Temporary vs. Permanent Employment

In some cases temporary workers do not receive the same fringe benefits and other advantages --- or even the same wages --- as permanent employees. This is often true even where the temporary worker is performing the same or similar work to the more experienced or permanent employee. Under an arrangement of this kind, the temporary employee cannot expect to obtain the same benefits as the permanent employee. Where a difference between temporary and permanent employees, in terms of the fringe benefits and other working conditions, is the prevailing condition of work in the occupation, temporary work is not unsuitable merely because it does not give the same benefits as permanent work (80H-184).

Nevertheless, the working conditions applicable to temporary workers must be prevailing for temporary work in the locality.

> Example: In an occupation and locality where it is customary for temporary workers to receive the same wage as permanent workers for similar work, even though they do not receive the same fringe benefits, an offer of work in which the temporary worker receives a substantially lower wage than the permanent worker is an offer of unsuitable work, since the arrangement by which temporary and permanent workers are differentiated is not prevailing in that case.

515.25 Discrimination

No prospective work is suitable if the employer offering such work practices discrimination on the basis of age, race, sex, religion, or other protected classes, in violation of any law. However, any allegation of discrimination must be supported by the evidence.

For a complete discussion of the factors to be considered in determining whether unreasonable discrimination exists, *see* VL 515.25.Discrimination.

515.35 Environmental Conditions

A. Unsuitable Location

In most cases, a claimant who refuses otherwise suitable work solely on the grounds that the neighborhood or locality of the prospective work is not suitable does not have good cause, unless there is a transportation problem or a risk to health, safety or morals. If the claimant's fears are reasonably based that there is a real danger of attack or molestation, the claimant may have good cause.

B. Workplace Environment

1. Legal standards

Health and safety standards of the work place are covered by federal and state regulation, and violations of these standards carry penalties, so the strong presumption is that the work is offered in compliance with these laws, unless clearly shown otherwise. Consequently, a mere allegation or supposition that the prospective employment does not conform to these legal requirements does not prove the work unsuitable. The allegation must be proven.

Any work that does violate legal standards is unsuitable. It is not necessary to show that the claimant's own health or safety is endangered by accepting the employment.

2. Physical environment

The most common objections to the physical environment of the work place relate to offensive odors, noise, drab and dreary surroundings, inadequate buildings and equipment, or crowded conditions. If these offensive conditions clearly exist, and it can be established that they are injurious to the claimant's health or safety, the claimant has good cause to refuse the offered work. A mere distaste for conditions that are prevailing and legal in the occupation is usually not sufficient to provide good cause.

3. Safety

A claimant must assume the risks customary to the occupation. Only where the risk to safety is more than that customary in the occupation, or if there is some personal condition of the claimant, is the work unsuitable.

If the offered work is outside the claimant's normal occupation, compare the risks in the new occupation with the risks in the claimant's normal occupation. Even though the risk in the new occupation may be customary for that occupation, it may still be significantly greater than the risks under which the claimant has previously worked, and may on that basis be unsuitable.

4. Sanitation

When prospective employment is refused because of alleged unsanitary working conditions, the claimant must establish that the unsanitary conditions are not only unusual but that they are a risk to health or safety.

515.4 Fellow Employee or Supervisor

Claimants may refuse employment, especially reemployment, on the basis of an objection to a particular fellow employee or supervisor. Such objections do not make the work unsuitable or give good cause for refusal, unless it can be shown that working with that person:

- Involves a significant risk to the claimant's health, safety, or morals;
- Subjects the claimant to abuse or insult; or
- Subjects the claimant to undue discrimination in the assignment of duties and performance of the work.

An objection to a fellow employee or supervisor solely on the grounds of race, color, or political affiliation is never good cause for refusing employment.

A claimant who has previously left the offered employment with good cause because of an inability to work with a former fellow employee or supervisor has good cause to refuse reemployment, provided the conditions remain the same.

515.6 Quantity or Quality of Work

A. Amount of Work

In some cases, a claimant may refuse work because of an objection to the amount of work the claimant is required to do. A refusal for this reason is seldom objectively based, since the claimant has not given the work a trial to determine if the claimant is capable of performing to the employer's standards. However, where the offer is an offer of reemployment, the claimant may be sufficiently aware of the condition to make a judgment about it.

In piece-rate occupations, a claimant may contend that to make the prevailing wage the prospective work requires faster work than is customary in the occupation. In this case, the objection is really directed against the actual wage paid per unit of work performed.

Generally, a production requirement is substantially less favorable than that prevailing if:

- It causes the claimant's earnings to be less than customary in the occupation for the claimant's ability and experience;
- It causes the claimant to work faster or under greater tension than is customary in the occupation; or
- It threatens the claimant's health or safety.

B. Manner of Work

1. General

In some cases, prospective work may be refused because of an objection to the manner in which the work is performed, or to the materials used. The claimant may object because the claimant feels that the quality of workmanship required is beyond the claimant's capabilities, or that the claimant's earning power is reduced, or because the method in which the work is performed does not measure up to the claimant's own standards of workmanship.

2. Method beyond claimant's capability

A refusal based on the claimant's belief that the method or quality of workmanship is beyond the claimant's capabilities normally does not provide good cause for refusal. The employer is usually the judge as to the claimant's ability to perform the work. (*See* SW 195.1 Insufficient Experience or Training for exceptions to this general policy.)

3. Earnings reduced

In some cases, a claimant's objection is based on the fact that the claimant's earning power would be materially reduced under the methods or quality of work demanded. Where the method or quality of work reduces the claimant's wage to below prevailing, the work is unsuitable.

> Example: An employer offers the prevailing wage, on a piece-rate basis, for packing a certain item in boxes, and the industry custom is that the box and materials be delivered on a conveyor belt. If this particular employment requires the employee to get the box of materials manually, the claimant's earning power might be reduced to substantially below that prevailing.

4. Pride of workmanship

An objection based on pride of workmanship almost never provides good cause for refusing otherwise suitable work, unless it can be shown that the claimant is a skilled artisan or craftsperson and the performance of substandard work would damage the claimant's reputation and subsequent earning power.