



APPEAL TRIBUNAL DECISION

Docket number: 24 0306 **Hearing date:** June 26, 2024

CLAIMANT:

SONSHINE KONOVALOV
PO [REDACTED]
[REDACTED]

EMPLOYER:

ALASKA CONSUMER DIRECT
PERSONAL CARE
[REDACTED]

CLAIMANT APPEARANCES:

Sonshine Konovalov

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed an April 3, 2024 determination that denied benefits under Alaska Statute 23.20.379. The issue before the Appeal Tribunal is whether the claimant voluntarily quit suitable work without good cause.

FINDINGS OF FACT

The claimant began work for the employer in 2012. She last worked on December 22, 2023. At that time, she worked varied hours as a personal care assistant.

On the claimant's last day of work, her client cursed at her several times and would not calm down. The client was disrespectful and got very close to the claimant's face while cursing, which felt like aggression to the claimant. The claimant felt uncomfortable and left the client's home and contacted the client's care coordinator and told him about the client's behavior. The care coordinator told the claimant she could leave the work, but she should return to the client's home first and get her timesheet signed by the client. The claimant had expected the care coordinator to intervene with the client and help her continue working, but she followed the instructions she was given.

The claimant returned to the client's home but the client refused to sign her timesheet and told the claimant she would be fired if she left. The claimant told the client she did not feel comfortable and she had permission to leave.

The claimant was scheduled to return to work with the client about a week after the Christmas holiday. The claimant told her supervisor she did not want to

return to work with that client because of the way they had mistreated her. The claimant told her supervisor that she was willing to work on call or be assigned to a new client. The claimant recalled that she spoke with the care coordinator about getting a new client as well.

In March 2024, the claimant contacted her supervisor because she had not received payment for her last timecard. The claimant advised her supervisor again that she was willing to accept on call work or a new full-time client. The claimant has not been offered more work by the employer as of the date of this hearing.

PROVISIONS OF LAW

AS 23.20.379 provides in part:

- (a) An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next five weeks of unemployment following that week if the insured worker...
 - (1) left the insured worker's last suitable work voluntarily without good cause....

8 AAC 85.095 provides in part:

- (c) To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:
 - (1) leaving work due to a disability or illness of the claimant that makes it impossible for the claimant to perform the duties required by the work, if the claimant has no other reasonable alternative but to leave work;
 - (2) leaving work to care for an immediate family member who has a disability or illness;
 - (3) leaving work due to safety or other working conditions or an employment agreement related directly to the work, if the claimant has no other reasonable alternative but to leave work;
 - (4) leaving work to accompany or join a spouse at a change of location, if commuting from the new location to the claimant's work is impractical; for purposes of this paragraph, the change of location must be as a result of the spouse's
 - (A) discharge from military service; or
 - (B) employment;
 - (5) leaving unskilled work to attend a vocational training or retraining course approved by the director under AS

- 23.20.382, only if the claimant enters the course immediately upon separating from work;
- (6) leaving work in order to protect the claimant or the claimant's immediate family members from harassment or violence;
 - (7) leaving work to accept a bonafide offer of work that offers better wages, benefits, hours, or other working conditions; if the new work does not materialize, the reasons for the work not materializing must not be due to the fault of the worker;
 - (8) other factors listed in AS 23.20.385(b).

AS 23.20.385(b) provides, in part:

- (b) In determining whether work is suitable for a claimant and in determining the existence of good cause for leaving or refusing work, the department shall, in addition to determining the existence of any of the conditions specified in (a) of this section, consider the degree of risk to the claimant's health, safety, and morals, the claimant's physical fitness for the work, the claimant's prior training, experience, and earnings, the length of the claimant's unemployment, the prospects for obtaining work at the claimant's highest skill, the distance of the available work from the claimant's residence, the prospects for obtaining local work, and other factors that influence a reasonably prudent person in the claimant's circumstances.

CONCLUSION

The first matter before the Tribunal is whether the claimant voluntarily quit suitable work or whether she was discharged. A discharge is "a separation from work in which the employer takes the action which results in the separation, and the worker does not have the choice of remaining in employment."

8 AAC 85.010(20). Voluntary leaving means a separation from work in which the worker takes the action which results in the separation, and the worker does have the choice of remaining in employment. Swarm, Com. Dec. 87H-UI-265, September 29, 1987. Alden, Com. Dec. 85H-UI-320, January 17, 1986.

The Tribunal finds the claimant in this case took the action that ended the employment relationship when she left the work before her shift was over and refused to return as scheduled. The Tribunal will consider if the claimant had good cause to leave suitable work at the time she did.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work, including leaving work due to safety or other working conditions or an agreement related

directly to the work, if the claimant has no reasonable alternative to leaving the work.

In Missall, Com. Dec. 8924740, April 17, 1990, the Commissioner of Labor summarized Department policy regarding what constitutes good cause for voluntarily leaving work. The Commissioner held, in part:

The basic definition of good cause is 'circumstances so compelling in nature as to leave the individual no reasonable alternative.' (Cite omitted.) A compelling circumstance is one 'such that the reasonable and prudent person would be justified in quitting his job under similar circumstances.' (Cite omitted). Therefore, the definition of good cause contains two elements; the reason for the quit must be compelling, and the worker must exhaust all reasonable alternatives before quitting.

The claimant in this case was mistreated by a client. The claimant reasonably refused to continue working with the client who mistreated her. The claimant brought her concerns to the employer but no action was taken except to tell the claimant to get her timesheet signed by the client and go home. The claimant let the employer know she was willing to continue working with other clients but no further work was offered.

The Tribunal concludes the claimant in this case had a compelling reason to leave work and exhausted reasonable alternatives to remain working. The penalties of AS 23.20.379 are not appropriate.

DECISION

The determination issued on April 3, 2024 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending December 23, 2023 through January 27, 2024, if otherwise eligible. The three weeks are restored to the claimant's maximum benefits. The determination will not interfere with the claimant's eligibility for extended benefits under AS 23.20.406-409.

APPEAL RIGHTS

This decision is final unless an appeal is filed in writing to the Commissioner of Labor and Workforce Development **within 30 days** after the decision is mailed to each party. The appeal period may be extended only if the appeal is delayed for circumstances beyond the party's control. A statement of rights and procedures is enclosed.

Dated and mailed June 28, 2024.



Rhonda Bunes, Appeals Officer