

**ALASKA DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
OFFICE OF THE COMMISSIONER
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JUNEAU, ALASKA 99811-1149**

**DECISION OF THE COMMISSIONER OF LABOR
Docket No. 21 1712**

IN THE MATTER OF:

CLAIMANT:

ROBERT MONTAVON

EMPLOYER:

FISHHOOK/HALFRACK/TOWNSITE

The claimant timely appealed to the Department from a Division Appeal Tribunal decision issued on February 7, 2022, that affirmed the decision denying benefits under AS 23.20.379.

We have reviewed the entire record of this case, including the audio recording of the hearing. The following is a brief synopsis of the facts regarding the claimant's separation from work.

The claimant worked in a retail setting as a cashier with direct public contact. His spouse was an emergency room nurse who became ill with COVID-19 symptoms in April 2020. The claimant notified the employer that his spouse was ill with COVID like symptoms, and he was advised by the hospital to quarantine. The claimant's spouse also has an underlying condition that made her more susceptible to life threatening complications from COVID-19.

Over several weeks, there were text messages sent between the employer and claimant. The employer would ask for an update to which the claimant would respond. There were at least two text messages where the claimant indicated he would be returning to work. However, he would later indicate either he or his spouse were still having COVID-19 symptoms. On May 24, 2020, the employer sent a message to the claimant stating this was the last attempt to try and get him back to work. On May 27, 2020, the claimant responded that he and his spouse were still sick. There was no further communication until June 16, 2020, when the employer asked the claimant to return the business keys.

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, Comm'r. Dec. 87H-UI-265, September 29, 1987. Alden, Comm'r. Dec. 85H-UI-320, January 17, 1986.

Despite the claimant's argument that he did not quit work, it was clearly the claimant's situation that was the direct cause of his unemployment. The employer had work available and was attempting to get the claimant to return to work. Therefore, we agree with the Tribunal's conclusion that the claimant quit work. However, the Tribunal also concluded the claimant quit work without good cause effective June 16, 2020. On this point, we disagree.

The May 24, 2020, message from the employer clearly stated it was a last attempt to get the claimant to return to work. The claimant responded on May 27, 2020, stating he was still not well and could not yet return. While the employer testified the claimant could have returned to work at any time, there was no evidence presented to establish there was any communication regarding a further extension of the employment relationship after May 27, 2020.

8 AAC 85.095(c)(1) provides that quitting work due to an illness or disability that makes it impossible for the claimant to perform the work can be compelling, so long as the claimant had no other alternative but to quit.

Therefore, we find the employment relationship ended on May 27, 2020, when the claimant was unable to return to work at the end of a period of personal leave due to ongoing illness, which is considered good cause for quitting work under 8AAC 85.095(c)(1).

The Division Appeal Tribunal decision issued on February 7, 2022, is **REVERSED**.

FURTHER APPEAL may be had from this decision by filing a Notice of Appeal in Superior Court for the State of Alaska within 30 days from the date of mailing of this decision as provided in AS 23.20.445, AS 44.62.560-570 and the Rules of Appellate Procedure of the State of Alaska. Unless an appeal is filed within the said 30-day period, this decision is final.

Dated and Mailed on June 14, 2022.



**DR. TAMIKA L. LEDBETTER
COMMISSIONER**