

### APPEAL TRIBUNAL DECISION

**Docket number:** 19 0554 **Hearing date:** July 16, 2019

**CLAIMANT: EMPLOYER:**

IRAN MELENDEZ AKBS LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Iran Melendez Cheryl Labrie

#### CASE HISTORY

The claimant timely appealed a June 10, 2019 determination which denied benefits under Alaska Statute 23.20.379. The issue before the Appeal Tribunal is whether the claimant voluntarily quit suitable work without good cause.

#### FINDINGS OF FACT

The claimant began work for the employer January 17, 2019. She last worked on April 4, 2019. At that time, she worked part time as a tax preparer.

The claimant was hired to work through the tax season only, and that work was expected to end on April 15, 2019. Toward the end of the season, the claimant did not believe she was getting enough hours to cover her daycare expenses. The claimant had applied for another job and she believed she might be hired, although she had not received a job offer.

On April 2, 2019, the claimant notified the employer that she resigning effective April 4, 2019 because she believed she was going to accept another job.

#### PROVISIONS OF LAW

**AS 23.20.379 provides in part:**

(a) An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next five weeks of unemployment following that week if the insured worker...

1. left the insured worker's last suitable work voluntarily without good cause....

**8 AAC 85.095 provides in part:**

(c) To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under

AS 23.20.385, the department will consider only the following factors:

(1) leaving work due to a disability or illness of the claimant that makes it impossible for the claimant to perform the duties required by the work, if the claimant has no other reasonable alternative but to leave work;

(2) leaving work to care for an immediate family member who has a disability or illness;

(3) leaving work due to safety or other working conditions or an employment agreement related directly to the work, if the claimant has no other reasonable alternative but to leave work;

(4) leaving work to accompany or join a spouse at a change of location, if commuting from the new location to the claimant’s work is impractical; for purposes of this paragraph, the change of location must be as a result of the spouse’s

(A) discharge from military service; or

(B) employment;

(5) leaving unskilled work to attend a vocational training or retraining course approved by the director under AS 23.20.382, only if the claimant enters the course immediately upon separating from work;

(6) leaving work in order to protect the claimant or the claimant’s immediate family members from harassment or violence;

(7) leaving work to accept a bonafide offer of work that offers better wages, benefits, hours, or other working conditions; if the new work does not materialize, the reasons for the work not materializing must not be due to the fault of the worker;

(8) other factors listed in AS 23.20.385(b).

**AS 23.20.385(b) provides, in part:**

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

other factors that influence a reasonably prudent person in the claimant's circumstances.

#### CONCLUSION

The claimant in this case voluntarily left work because she was not getting sufficient hours to balance her daycare expenses. The claimant believed she was about to be offered another job.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. Leaving work to accept a bone fide office of work may be considered good cause, but the claimant in this case did not have an offer of work.

The claimant’s reduced hours do not constitute good cause for leaving work. Part-time work allows workers time to search for more work and part-time work only requires part-time child care. The claimant went from having some work to no work, which is not a reasonable and prudent action. The claimant in this matter did not leave work for one of the allowable reasons laid out in the regulation.

The claimant did not establish that the work was a risk to her health, safety or morals, or that she was not physically fit for 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 has not established that she had good cause to leave work at the time she did. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on June 10, 2019 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending April 6, 2019 through May 11, 2019. The three weeks remain reduced from the claimant’s maximum benefits. The claimant may not be eligible for extended benefits under AS 23.20.406-409.

#### APPEAL RIGHTS

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

Dated and mailed on July 25, 2019.

 Rhonda Buness, Appeals Officer