

### APPEAL TRIBUNAL DECISION

**Docket number:** 19 0582 **Hearing date:** July 11, 2019

**CLAIMANT: EMPLOYER:**

DENICE SPENCER GREATER ALBANY PUBLIC SCHOOL

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Denice Spencer Randy Lary

#### 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 or was discharged for misconduct connected with the work.

#### FINDINGS OF FACT

The claimant began work for the employer on September 24, 2018. She last worked on March 18, 2019. At that time, she worked full time as a teacher.

The claimant taught classes in the employer’s alternative education program. The claimant was concerned with behavior problems of some of the students in her classroom. A student accused the claimant of touching him inappropriately with no basis. Two friends of the student started repeating the accusation to taunt the claimant. The claimant reported the student’s behavior to her supervisor and he told her that he knew the claims were false and the students were repeating it because they found it funny. The claimant was advised to meet with the parents of the students to talk about the accusations. The claimant felt this was a bad idea and she thought she would be at risk by meeting with the parents.

The claimant was concerned that if the students continued to repeat the false claims, people might start thinking there was some truth to them and cause damage to the claimant’s reputation. She was concerned that she could be placed under investigation, which in itself would make it difficult to get another teaching job. The claimant asked to be moved to another classroom, but she was advised there were no openings available.

A few days before her work ended, the claimant met with her supervisor about her concerns. The claimant felt her supervisor was disrespectful and raised his voice to her. He told her it was her responsibility to fix the relationship with the students that were acting out. The claimant was told by her supervisor to keep her concerns to herself and not take the matter to the district office.

The claimant advised her union representative of her situation, but she did not attempt to take her concerns further with the employer by filing a grievance or a complaint with the employer’s human resources office. She did not contact the employer’s district office or the school board because she did not want to cause problems. The claimant resigned effective immediately on March 18, 2019. She later filed a complaint with the employer about the matter in June.

#### 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 quit work because she was concerned about student behavior and the possible impacts on her reputation and she did not feel her supervisor was supporting her.

*“It is a long standing holding of the Department that even if a claimant establishes good cause for leaving work, it must still be determined that the worker pursued reasonable alternatives in an effort to preserve the employment relationship. Walsh, Com. Decision 88H-UI-011, March 15, 1988. That is not to say the claimant must pursue all alternatives, but when an employer has a grievance policy in place and communicates that to the employees, a reasonable alternative to quitting would be to pursue such a grievance.” Stiehm, Com. Dec. 9427588, July 29, 1994, affirmed in Kalen-Brown, Comm. Dec. 04 1952, December 13, 2004.*

*We have ruled in cases similar to this that even where a worker has an adequate reason for leaving work, the worker must attempt to remedy the situation before leaving in order to escape disqualification under AS 23.20.379. The worker must give the employer a chance to remedy his grievance. Larson, Com. Dec. 9121530, Nov. 8, 1991, affirmed, Larson v. Employment Security Division, Superior Court 3JD No. 3 KN-91-1065 civil, March 4, 1993.*

The claimant felt her supervisor was not handling the matter correctly, but she did not attempt to take the matter above him. The employer had a formal complaint process available, but the claimant chose not to pursue that reasonable alternative until after she had quit the work. It is the conclusion of the Tribunal that the claimant voluntarily quit work without good cause and 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 March 23, 2019 through April 27, 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 22, 2019.

 Rhonda Buness, Appeals Officer