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### APPEAL TRIBUNAL DECISION

**Docket number:** 19 1019 **Hearing date:** November 7, 2019

**CLAIMANT: EMPLOYER:**

CATHERINE BLISS FURNITURE ENTERPRISE OF AK INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Catherine Bliss Annette Gwalthne-Jones

#### CASE HISTORY

The claimant timely appealed an October 9, 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 June 1, 2017. She last worked on September 1, 2019. At that time, she worked full time as a design consultant.

The claimant was unhappy with the supervision style of her new manager. She complained to the employer’s human resources office when the manager compensated her for work with a gift card. The employer properly compensated the claimant. The claimant complained that the manager touched her in a manner that made her uncomfortable. This improved when the claimant asked the manager to change the behavior.

The claimant ultimately submitted her resignation on August 20, 2019 because the manager had reorganized her work and had the claimant defer to an in-house designer. The claimant felt she was doing more work and getting less credit. The claimant didn’t want to leave the employer short-handed right before a planned Labor Day sale, so she designated September 3, 2019 as her last day of work.

The general manager approached the claimant after her resignation. The claimant told the general manager she would consider staying on if certain things changed. The claimant did not note any changes the following week. On August 31, 2019, the manager told the claimant her last day of work would be September 1, 2019. This date was chosen for the convenience of the employer’s payroll.

#### 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....

 (2) was discharged for misconduct connected with the insured worker's last work.

**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).

 (d) "Misconduct connected with the insured worker's work" as used in

 AS 23.20.379(a)(2) means

 (1) a claimant's conduct on the job, if the conduct shows a willful and wanton disregard of the employer's interest, as a claimant might show, for example, through gross or repeated negligence, willful violation of reasonable work rules, or deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee; willful and wanton disregard of the employer's interest does not arise solely from inefficiency, unsatisfactory performance as the result of inability or incapacity, inadvertence, ordinary negligence in isolated instances, or good faith errors in judgment or discretion....

**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

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.

In Flores, Com. Dec. No. 96 2183, December 16, 1996, the Commissioner set new policy regarding work separations earlier than the original intended date as follows:

*In Kennedy, Com. Dec. 9027951, October 10, 1990, we held that a claimant who was given one day's notice of a layoff and who then was given permission for leave the last day, remained laid off. The separation did not become a quit. We now extend that holding to cover workers who leave early after notice of discharge, but with less than two full shifts remaining in the notice period. These workers will be considered discharged. The discharge remains the primary and proximate reason for their unemployment. Inversely, if a claimant gives notice and the employer chooses to end the employment with less than two shifts remaining, the nature of the separation remains a voluntary leaving….*

The claimant in this case submitted a resignation. The employer then changed the date, reducing the claimant’s remaining work by two shifts. In applying Flores, the Tribunal must find the employer took the action that ended the employment relationship. Because the reason for changing the claimant’s last day was for the employer’s convenience, the claimant’s discharge was clearly not for work related misconduct. Therefore, the penalties of AS 23.20.379 are not appropriate.

#### DECISION

The determination issued on October 9, 2019 is **REVERSED.** Benefits are **ALLOWED** for the weeks ending September 7, 2019 through October 12, 2019, 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 on November 13, 2019.

 Rhonda Buness, Appeals Officer