

### APPEAL TRIBUNAL DECISION

**Docket number:** 19 1025 **Hearing date:** November 12, 2019

**CLAIMANT: EMPLOYER:**

JORDYN BROPHY E&A INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Jordyn Brophy David James

#### CASE HISTORY

The claimant timely appealed an October 15, 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 in August 2015. She last worked on August 1, 2019. At that time, she worked part time as a janitor.

The claimant’s husband accepted a new job in New Mexico which started on July 15, 2019. The claimant notified the employer about a month in advance that she would end her work effective August 1, 2019 and relocate. The claimant planned to leave for New Mexico on August 2, 2019. The departure date was pushed back to August 9, 2019 and then to August 14, 2019, when she did depart.

The claimant considered changing her last day of work when her departure plans changed, but she knew the employer had a replacement ready to take over the claimant’s schedule. The claimant found she needed additional time to deal with packing of the family’s belongings and selling her car before her departure. This was made more difficult by the absence of the claimant’s husband and by the requirement to care for her infant child.

#### 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 resigned to relocate with her husband who moved for employment. Regulation 8 AAC 85.095(c)(4) holds that this may be considered good cause for voluntarily leaving suitable work.

In Anderson, Com. Dec. 95 2430, December 15, 1995, the Commissioner of the Department of Labor and Workforce Development held:

We have previously held that a claimant who quits work more than a few days before it is necessary because of a spousal transfer negates the good cause supplied by the primary reason for the quit. We still support that reasoning. However, in this case we do not believe the 18 days between quit and transfer negated good cause. The claimant had several tasks to accomplish before the move, including packing for the long drive out of state and preparing for the household movers. She also needed to prepare her young son for the move. Her husband could not assist except for the actual packing. She often worked overtime on her job, so getting these tasks done while she was still working would have been difficult.

The claimant left work 12 days before she relocated. Her plans were delayed after she gave the employer notice. The Tribunal finds that 12 days is not an exceptional amount of time for a single parent to deal with the logistics of moving a family.

The claimant had good cause for voluntarily quitting work at the time she did. The penalties of AS 23.20.379 are not appropriate.

#### DECISION

The determination issued on October 15, 2019 is **REVERSED.** Benefits are **ALLOWED** for the weeks ending August 3, 2019 through September 7, 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 14, 2019.

Rhonda Buness, Appeals Officer