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### APPEAL TRIBUNAL DECISION

**Docket number:** 19 1036 **Hearing date:** November 12, 2019

**CLAIMANT: EMPLOYER:**

JARROD TAYLOR SR BALES CONSTRUCTION INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Jarrod Taylor None

#### CASE HISTORY

The claimant timely appealed an October 16, 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 about August 30, 2019. He last worked on September 28, 2019. At that time, he worked full time as a truck driver.

The claimant consumed alcohol on September 29, 2019 and he was arrested and charged with driving under the influence in the early morning hours of September 30, 2019. The claimant had waited for a time after he stopped consuming alcohol and he believed he was okay to drive. The claimant was processed and was released in time to attend work that day.

When he arrived at work, the claimant told the employer that his commercial driver’s license was suspended. The claimant could not work as a truck driver without his license and he does not know when he might get that license back. The employer did not have any other work the claimant could perform.

#### 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.

The claimant did not intend to leave work and he showed up for his next scheduled shift, however he was not allowed to work because he no longer had a commercial driver’s license. The Tribunal finds the employer took the action that ended the employment relationship, so the separation is a discharge. The Tribunal will consider if the discharge was for work related misconduct.

In Traylor, Com. Dec. No. 88H‑UI‑140, March 6, 1989 the Commissioner of the Department of Labor and Workforce Development provides:

*As the court stated in Grimbel v. Brown, 171 So.2d 653 (La. Sup. 1965), “the question for determination must always be whether the result of the misconduct has adversely affected the employee's ability and capacity to perform his duties in an appreciable degree. If it has, then it follows that it is contrary to the employer's interest and in ‘ . . . disregard of standards of behavior which the employer has the right to expect of his employee . . . .’”*

As in Traylor, this claimant’s ability and capacity to perform his duties was affected by his actions of driving while under the influence outside of work hours. The employer could no longer use the claimant’s services as a result of those actions, which is clearly contrary to the employer’s interests. The claimant’s actions were willful and the employer was harmed.

The Tribunal concludes the claimant was discharged for misconduct connected to the work. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on October 16, 2019 is **AFFIRMED.** Benefits are **DENIED** under AS 23.20.379(a)(2) for the weeks ending October 5, 2019 through November 9, 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 November 15, 2019.

 Rhonda Buness, Appeals Officer