

### APPEAL TRIBUNAL DECISION

**Docket number:** 19 1136 **Hearing date:** December 9, 2019

**CLAIMANT: EMPLOYER:**

WILLIAM JURGELEIT FRIENDS OF RECYCLING

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

William Jurgeleit Melissa Aronson

#### CASE HISTORY

The claimant timely appealed an October 11, 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 May 15, 2014. He last worked on August 23, 2019. At that time, he worked part time as a field assistant.

The claimant was hired to work 20 hours per week and 30 hours per week in the summer when the recycle facility is busiest. As community use of the facility grew, the claimant found those hours were not sufficient to accomplish his job duties. The claimant had recently been working almost 40 hours per week.

On August 13, 2019, the employer’s board of directors decided due to budgetary reasons that the claimant would be limited to 30 hours per week with additional hours only on approval. The employer intended encourage community volunteers to help more. The claimant asked the employer to reconsider, as he felt like his job duties would not be accomplished in those hours and volunteers would not be helpful. On August 17, 2019, the employer confirmed that the claimant’s hours would be cut. The claimant gave his notice that day and worked through August 23, 2019. He had decided there was too much work for the hours allowed, things would not get done and he did not want to work for an employer that would not follow his recommendations.

#### 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 voluntarily quit work when his hours were cut to 30 hours per week.

*"Once having voluntarily quit, it is the burden of the claimant to establish good cause." Fogleson, Com. Dec. 8822584, February 28, 1989.*

In McCarthy, Com. Dec. 9427041, July 29, 1994, the Commissioner of Labor addressed whether a reduction of work hours provided good cause for quitting. The Commissioner held:

 *We have previously held that a cut in hours, in and of itself, does not constitute good cause for leaving otherwise suitable work. In re Thomas, Com. Dec. 86H-UI-145, May 15, 1986. Usually a cut back in hours gives the claimant the time necessary to look for other work, and possibly qualify for unemployment benefits while working part time.*

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 in this case did not establish that he had a compelling reason to voluntarily leave work at the time he did. As in McCarthy, a cut in hours does not constitute good cause for leaving work, as the claimant went from a situation of reduced wages to no wages, and a cut in hours provided the claimant with time to look for other work.

The claimant did not have good cause to leave work. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on October 11, 2019 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending August 31, 2019 through October 5, 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 December 16, 2019.

 Rhonda Buness, Appeals Officer