

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0153 **Hearing date:** March 3, 2020

**CLAIMANT: EMPLOYER:**

NICOLE GORDON ALEUT ENTERPRISE LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Nicole Gordon None

#### CASE HISTORY

The claimant timely appealed a February 7, 2020 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.

#### FINDINGS OF FACT

The claimant began work for the employer in December 2015. She last worked on November 16, 2019. At that time, she worked full time as a hotel manager in Adak.

The claimant had a child in 2019. The claimant took her child for a routine two-month check up at the local clinic. The claimant later learned her child had been given two vaccines that were not supposed to be administered until the child was a year old. No complications occurred and the claimant’s child has no known health concerns. The claimant talked to her family pediatrician in Washington and learned how future vaccines should be timed to get her child on the proper vaccination schedule. The claimant returned to the clinic for a three-month check and saw a new provider, who wanted to give her child an additional vaccine on a different schedule than the claimant’s pediatrician recommended.

At that point, the claimant decided she needed to relocate so her child would have better access to pediatric care than that available at a small clinic in an isolated community. The claimant had a high risk pregnancy with her child and she could not receive her pregnancy care in Adak. The claimant plans to have more children and she believes the isolated community is not a good place to have children. The claimant advised the employer in July 2019 that she would be relocating in November. The claimant wanted to give the employer a long notice period because she believed it would take them some time to replace her. The claimant last worked on November 16, 2019. She relocated to Olympia, Washington, where she has family, on November 20, 2019.

The claimant asked the employer about the possibility of transfer to another work site. The employer has a worksite in Eastern Washington, but not near the area where the claimant wanted to relocate near her family.

#### 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 suitable work to relocate so her child could have better access to pediatric care.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. The claimant in this matter did not leave work for one of the allowable reasons. The regulation also directs the Department to consider the suitability of the work as laid out in AS 23.20.385(b). The claimant did not establish that the work was a risk to her health, safety or morals, or that she was not physically fit for the work. This leaves the Tribunal to consider other factors that would influence a reasonably prudent person in the claimant’s circumstances.

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’s concerns about her child’s access to health care are understandable and parents have a moral and legal responsibility to provide care for their children. However, the claimant’s child did not have health concerns that would necessitate living near specialty care. The claimant remained in Adak for four months after deciding to relocate, which does not indicate a compelling need to be near health care. The claimant did not consider relocating to an area where the employer might have work to transfer her to, she only asked about the possibility of work in the area where she had decided to relocate near her family.

The Tribunal cannot conclude that the claimant had good cause to voluntarily leave available work at the time she did. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on February 7, 2020 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending November 23, 2019 through December 28, 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 March 3, 2020.

 Rhonda Buness, Appeals Officer