

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0256 **Hearing date:** April 2, 2020

**CLAIMANT: EMPLOYER:**

SHEILA MCFADDEN COMMISSARY DEFENSE 421

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Sheila McFadden None

#### CASE HISTORY

The claimant timely appealed a March 11, 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 on September 9, 2017. She last worked on February 7, 2020. At that time, she worked full time as a store clerk.

The claimant resides with her daughter who is in the military. The daughter is a single mother and the claimant serves as a back-up guardian for her grandchild if her daughter is deployed or sent into the field. The claimant’s daughter was transferred by the military to a base in Georgia. The military paid the claimant’s moving expenses because she is considered a dependent of her daughter because of the child guardianship.

The claimant advised her employer in advance of the upcoming relocation and the employer arranged for the claimant to be transferred to a similar job at one of two bases in Georgia. The claimant departed Alaska on February 9, 2020. The claimant did not have a definite offer of work with a start date in Georgia. The claimant was advised by the employer to give herself some time to get settled, so she informed the employer that she would be available to start work in Georgia on March 9, 2020. The claimant called the employer after her arrival to let the employer know she could start sooner. The claimant established a claim for unemployment insurance benefits effective February 16, 2020. The claimant was later advised by the employer that her start date has been delayed by issues caused by the COVID-19 pandemic.

#### 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 argued that she did not voluntarily quit her job, she requested a transfer and the employer agreed. The claimant did not have a definite date to return to work and she established a claim for benefits effective February 16, 2020. When a claim is established, the Division is required to examine the reason the claimant became unemployed and apply penalties in accordance with applicable statutes and regulations.

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 took the action that resulted in her unemployment when she told the employer that she was relocating. The separation is therefore a voluntary leaving. The Tribunal will consider if the claimant had good cause for leaving at the time she did.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. Subsection (4) holds that a claimant may have good cause to quit to relocate with a spouse when the spouse relocates for work, but that is not the case here, as the claimant quit to move with her daughter. The claimant 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 in this case does not have a legal obligation to care for her grandchild or to relocate with her daughter. While it is understandable that she chooses to do so, she has not established that she had a compelling reason to leave work at the time she did. The Tribunal cannot conclude that the claimant had good cause to voluntarily leave suitable work. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on March 11, 2020 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending February 15, 2020 through March 21, 2020. 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 April 2, 2020.

Rhonda Buness, Appeals Officer