

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0300 **Hearing date:** April 30, 2020

**CLAIMANT: EMPLOYER:**

AARON GRAY LAKE OTIS PHARMACY INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Aaron Gray Joe Vergnetti

#### CASE HISTORY

The claimant timely appealed a March 26, 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 August 12, 2019. He last worked on March 16, 2020. At that time, he worked full time as a customer service representative.

On February 21, 2020, the owner held a staff meeting and issued a memo requiring all employees to check customer identification when accepting credit card payments, check all currency larger than $20 and higher for authenticity, get the owner’s approvals for all returns and discounts, clock out for personal breaks, and to check with the owner directly when unsure how to handle a situation. The owner held the meeting and issued the memo because he was dissatisfied with some aspects of the claimant’s performance in those areas and hoped this would improve it. He did not single the claimant out in the meeting. The claimant believed the memo and the meeting were directed at him because the owner had frequently corrected the claimant. The claimant signed the memo, but did not read it.

On March 13, 2020, the claimant was scheduled to deliver an assistive bed to a customer with a senior employee, who was second in command to the owner. The senior employee was at a doctor’s appointment, so the claimant set out to get the bed from a storage container outside the place of business. He located two beds in a container, but they were not the fully assistive bed that was ordered. The claimant called the senior employee at his appointment and asked what he should do. The senior employee told him the correct bed could be in another container, and if not, he could wait on the delivery, or if there was no bed available, he could deliver the lesser product and then switch it with the right bed when it was located. The claimant found the lock on the other container was frozen and he could not open it. He delivered the lesser bed to the customer with a promise to switch it with the correct bed later.

The owner was inside the business at the time the claimant was looking for the bed, but he claimant did not want to approach the owner. The claimant felt that he had not been properly trained for his duties. He felt like he was singled out for criticism by the owner and he was yelled at for doing things the way he had watched other employees doing them. He found that when approached, the owner often told him to go ask the senior employee his questions.

The claimant was stressed by the atmosphere at work. He felt it was affecting his health because he wasn’t sleeping, was over-eating and his marriage was suffering. The claimant had attempted to make a doctor’s appointment, but had been delayed and he had not consulted a medical provider at the time the work ended.

On Monday, March 16, 2020, the owner presented the claimant with a performance improvement plan document. The document stated the owner believed the claimant was dishonest because he had not communicated all the details of the bed delivery issue the previous Friday. The performance plan directed the claimant to communicate honestly and provide full details, to communicate any deviation from full payment and any refund or adjustment directly with the owner, and to give the owner all of his paperwork to review before submitting it.

The claimant believed the employer’s document was accusing him of wrongdoing and he did not agree he had done anything wrong. He refused to sign the document. The claimant believed the owner would discharge him for refusing to sign the performance improvement plan. The claimant believed it would be better for him to have quit than to be fired, so he told the owner he was quitting and left.

#### 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 voluntarily quit work when the employer required him to sign a performance improvement plan. The claimant did not agree with the employer’s conclusion that he had acted incorrectly. The claimant believed he would be discharged for his refusal to sign, so he voluntarily quit the work.

The claimant held that in addition to his unwillingness to be discharged, he quit because the owner harassed him and caused stress that affected his health. The claimant did not establish in the hearing that the owner’s treatment of him rose to the level of abuse or discrimination that would compel him to quit. He had not received a medical recommendation to leave the work. He did not quit until presented with a performance improvement plan, which was not an unreasonable act by the owner, considering the owner’s directives to the claimant to talk to the owner directly with questions a month before. The claimant has not established that he had good cause to leave the work becauof the owner’s treatment of him.

*"We have consistently held that a worker who chooses to resign rather than accept dismissal by their employer, does so without good cause. See Pence, Com. Dec. 93234931, February 9, 1994, Wood, Com. Dec. 950820, June 6, 1995 and Brown, 9225776, June 24, 1992." In Arnold, Com. Dec. 96 1772, August 5, 1996.*

The above Commissioner Decisions hold that impending discharge or fear of discharge is never good cause to quit work. As this was the claimant’s reason for quitting, good cause has not been established and a disqualification was properly imposed.

#### DECISION

The determination issued on March 26, 2020 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending March 21, 2020 through April 25, 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 30, 2020.

 Rhonda Buness, Appeals Officer