

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0353 **Hearing date:** May 1, 2020

**CLAIMANT: EMPLOYER:**

RUTH LUX CITY OF COFFMAN COVE

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Ruth Lux None

#### CASE HISTORY

The claimant timely appealed an April 1, 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 2009. She last worked on March 16, 2020. At that time, she worked part time as a contract postmaster.

On her last day of work, the claimant asked her supervisor, the mayor, about possible safety precautions to protect the claimant from close contact with customers in the small postal office. The claimant is immunocompromised and she was very concerned about the possible severity of COVID-19 because of that. The claimant asked if she could hand all packages out the back door to reduce contact. She asked if she could hang a plastic sheet over the customer window. The mayor dismissed the claimant’s concerns and told her not to worry about it. The claimant used disinfecting wipes frequently and asked customers to stand back from the narrow front counter.

Later that day, a young customer was leaning against the narrow front counter and the claimant asked the teen repeatedly to move back six feet. The claimant explained the social distancing guidelines being issued by the government. The customer took some of her packages and left. The teen’s parents then came to the office to get the rest of their packages and yelled at the claimant and accused her of being racist toward their teen. The claimant denied being racist and explained her health concerns. The claimant could see spittle flying toward her from the parent’s mouth from the yelling. The claimant told the parents they could pick up their packages at the back door and closed the separating window.

The next morning, the mayor came to the claimant’s house and told her the parents had complained. The claimant explained the situation. The mayor spoke with the customers and then required that the claimant apologize to them for being rude to the teen. The claimant refused, because she had not been rude. She told the mayor that if she was required to apologize, she would just turn in her keys. The mayor accepted that and the claimant collected her personal belongings and turned in her keys.

#### 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 because her supervisor was requiring her to apologize to customers who believed she had been rude and racist to their teen daughter. The claimant quit because she did not believe she should be required to apologize because she had not been rude or racist, only concerned for her own health.

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). Although the claimant had concerns about her health and safety in the workplace, she did not leave for those reasons. The claimant did not establish that she left the work because it 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.*

#### While the claimant’s actions in asking the customer to maintain a six foot distance were reasonable, her refusal to issue any sort of an apology to the customers as required by her supervisor does not justify quitting her job. She was not told she would be fired if she did not apologize. She did not establish that she would have been harmed by apologizing for the way her actions were received, though she did not intend any harm, to appease the customers.

The claimant has not established that she had good cause to voluntarily leave work at the time she did. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on April 1, 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 May 1, 2020.

Rhonda Buness, Appeals Officer