

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0758 **Hearing date:** July 16, 2020

**CLAIMANT: EMPLOYER:**

TRACY PABEL STEWART TITLE COMPANY

11411 E CRIMSONVIEW DR TALX

PALMER, AK 99645-9306 PO BOX 283

SAINT LOUIS, MO 63166-0283

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Tracy Pabel None

#### CASE HISTORY

The claimant timely appealed a June 10, 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 November 1, 2019. She last worked on April 22, 2020. At that time, she worked full time as an escrow officer.

In February 2020, the new general man met with claimant for the first time and he immediately criticized the claimant’s clothing as too casual and told her she needed to do something with her hair. The claimant believed her clothing and her hair were appropriate for the office, but she attempted to improve. In March 2020, the manager criticized a photo of the claimant at work which was circulated in the office. He said her sweater and pants were not acceptable she was not allowed to wear sweaters at work.

In early April 2020, the claimant was injured at work when dust was blown into her eye while she was assisting a customer curbside. The next day, her eye was swollen and crusted. The claimant sent a picture to the manager and advised him that she was going to leave work to seek medical care. The manager told the claimant he did not care about her eye, to stay at work, and to never send him such a picture again, in a very callous and uncaring manner. The claimant was very upset. She began looking for other work.

On April 22, 2020, the general manager chastised the claimant in an email for the way she presented an escrow document in a file. The claimant replied that the manager had previously instructed her to present the document that way. The manager told the claimant not to question his instructions and just do what she was told in a very abrupt manner. The claimant was extremely frustrated with the general manager’s communications and she decided to leave the work immediately instead of waiting until she had found another job. She told the general manager that he could get someone else to do the work because she was done, and she left.

The claimant did not take her complaints about the general manager’s communications to the employer’s human resources office. She believed if she complained, the general manager might treat her worse.

#### 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 the work because she was frustrated with what she felt were harassing communications from the general manager.

*“It is a long standing holding of the Department that even if a claimant establishes good cause for leaving work, it must still be determined that the worker pursued reasonable alternatives in an effort to preserve the employment relationship.* Walsh, Comm. Decision 88H-UI-011, March 15, 1988. *That is not to say the claimant must pursue all alternatives, but when an employer has a grievance policy in place and communicates that to the employees, a reasonable alternative to quitting would be to pursue such a grievance.”* Stiehm, Comm. Dec. 9427588, July 29, 1994, affirmed in Kalen-Brown, Comm. Dec. 04 1952, December 13, 2004.

*We have ruled in cases similar to this that even where a worker has an adequate reason for leaving work, the worker must attempt to remedy the situation before leaving in order to escape disqualification under AS 23.20.379. The worker must give the employer a chance to remedy his grievance. Larson, Comm. Dec. 9121530, Nov. 8, 1991, affirmed, Larson v. Employment Security Division, Superior Court 3JD No. 3 KN-91-1065 civil, March 4, 1993.*

The claimant’s manager was critical of her appearance and her work performance. The claimant believed the criticism was unwarranted and harassing in nature, but she did not give the employer the opportunity to remedy her grievance by reporting the manager to the human resources office. The claimant could not know that the outcome of such a report would be worse treatment from the manager.

In applying the precedent decisions of the Commissioner and the court quoted above, the Tribunal must conclude that the claimant voluntarily quit work without good cause.

#### DECISION

The determination issued on June 10, 2020 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending May 2, 2020 through June 6, 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 July 24, 2020.

Rhonda Buness, Appeals Officer