

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 0762 **Hearing date:** July 15, 2020

**CLAIMANT: EMPLOYER:**

JUNE ANNE-TIFA DENALI FOODS INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

June Anne-Tifa Renae Saade

 Melanie Veeh

 John Mayfield

#### CASE HISTORY

The employer timely appealed a June 8, 2020 determination which allowed the claimant’s benefits without penalty 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 July 2018. They last worked on December 3, 2019. At that time, they worked part time as a team member.

On December 3, 2020, the employer noted the claimant was listening to music while working.  The claimant was permitted to wear noise cancelling headphones while working as an accommodation for medical conditions. The claimant believed they had been given permission to listen to music while working and had been doing so for about a year. The employer advised the claimant listening to music was a safety hazard because the claimant might not hear an alarm or a co-worker in an emergency. The claimant was also given an accommodation to take a ten minute break once during each 4-hour shift if needed.  The claimant believed they had been given permission to take ten minute breaks whenever needed, not just one break per shift. The employer does not permit workers breaks unless working more than four hours, and the employer clarified it was willing to permit one ten-minute break during a 4-hour shift without further medical advice regarding the claimant's required accommodations.

The claimant has been diagnosed with autism and post-traumatic stress disorder. The claimant found listening to music while working helped them focus without distraction, calmed them when the workplace was chaotic and helped with panic attacks and overwhelming feelings.  The claimant also has scoliosis. The claimant required brief breaks from work when back pain and cramping became intolerable. The claimant also required breaks at times when overwhelmed by loud noises. The employer accommodated this by not scheduling the claimant to work on delivery days, which are particularly loud and chaotic.  The claimant did not believe they could work without the music or an alternative accommodation, and the ability to take a break whenever needed. The claimant requested a leave of absence to seek medical advice regarding the required accommodations. The employer granted the leave.

The claimant saw their primary care provider in December 2019. The doctor was not able to advise the claimant on required accommodations until the claimant obtained updated evaluations by specialists regarding the diagnoses of autism and scoliosis. The claimant was evaluated by the first specialist on March 5, 2020.

The claimant established a claim for unemployment benefits effective March 29, 2020.  The claimant was not aware they may be eligible for unemployment benefits until hearing of special pandemic unemployment benefits in the news.

The claimant was scheduled to see the second specialist April 14, 2020, but the appointment was cancelled because of mandates of the COVID-19 pandemic. The appointment was rescheduled for May 5, 2020, but the claimant cancelled that appointment because the medical office was located in a hospital complex and the claimant was concerned about visiting that complex due to the rising number of COVID-19 cases in the city at that time.  The claimant's partner who resides in the same home has a medical condition that may cause increases susceptibility to the COVID-19 virus and its complications.  The claimant plans to reschedule the appointment when the virus cases are no longer rising, then see the primary care physician to get documentation of workplace accommodations to present to the employer.

#### 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 left work because the accommodations the employer was willing to provide were not sufficient to allow the claimant to perform the duties of the work without harm to their health. The employer has a duty to endure workplace safety and the employer reasonably required medical documentation of the claimant’s need for additional accommodation.

Regulation 8 AAC 85.095(c)(1) holds that a claimant may have good cause to voluntarily leave work when they do so 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. The claimant in this case left work to seek medical evaluation and documentation of their need for accommodation in the workplace due to disabilities. The claimant requested a leave of absence to protect their job while obtaining the documentation. The claimant’s evaluation has been delayed by the COVID-19 pandemic.

The Tribunal concludes the claimant had good cause to voluntarily leave work at the time they did. The penalties of AS 23.20.379 are not appropriate.

#### DECISION

The determination issued on June 8, 2020 is **AFFIRMED.** Benefits remain **ALLOWED** for the weeks ending December 14, 2020 through January 18, 2020, if otherwise eligible. The three weeks are not reduced from the claimant’s maximum benefits. The determination will not interfere with the claimant’s eligibility 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