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**APPEAL TRIBUNAL DECISION**

**Docket Number:** 20 1069 **Hearing Date:** August 28, 2020

**CLAIMANT: EMPLOYER:**

JAMES YOUNG YC FAIRBANKS HOTEL GRP LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

James Young None

####  CASE HISTORY AND FINDINGS OF FACT

The claimant filed an appeal against a June 15, 2020 determination that denied unemployment benefits under AS 23.20.379 on the ground that the claimant voluntarily left work without good cause. The Division of Employment and Training Services mailed the determination to the claimant’s address of record on

June 16, 2020. The claimant filed an appeal on Monday, July 20, 2020, bringing forth the issue of timeliness of the appeal.

The claimant’s appeal was filed on the 34th day following the mailing of the determination by the Division.

#### PROVISIONS OF LAW

**AS 23.20.340. Determination of claims.**

(e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant’s last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant shows that the application was delayed as a result of circumstances beyond the claimant’s control.

(f) If a determination of disqualification under AS 23.20.360, 23.20.362, 23.20.375, 23.20.378 ‑ 23.20.387, or 23.20.505 is made, the claimant shall be promptly notified of the determination and the reasons for it. The claimant and other interested parties as defined by regulations of the department may appeal the determination in the same manner prescribed in this chapter for appeals of initial determinations and redeterminations. Benefits may not be paid while a determination is being appealed for any week for which the determination of disqualification was made. However, if a decision on the appeal allows benefits to the claimant, those benefits must be paid promptly.

**8 AAC 85.151 provides in part;**

1. An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant’s last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. However, the 30-day period may be extended for a reasonable time if the claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

#### CONCLUSION

An appellant has the burden to establish some circumstance beyond the appellant’s control prevented the timely filing of the appeal.

Under Rule 6 of the Rules of Civil Procedure an additional three days is added to the prescribed period for service by mail. The rule also states that the last day of the period is counted unless it is a Saturday, Sunday or a legal holiday.

The claimant filed his appeal on Monday following the last day of the 33 day period, which was Sunday. As noted in Rule 6, the appeal is timely.

#### DECISION

The claimant’s appeal from the notice of determination issued on June 15, 2020 is **GRANTED**.

#### FINDINGS OF FACT

(Separation)

The claimant began work for the employer on or about March 13, 2020. He last worked on March 16, 2020. At that time, he worked part time as a breakfast attendant. He was paid an hourly wage. The claimant filed an additional claim for unemployment insurance benefits effective April 19, 2020.

The claimant was approached by a guest of the hotel about a matter in her room. The claimant escorted her to the front desk. The manager on duty told the claimant that the guest issue with her room was no concern of his and he should get his butt back to the breakfast area. The guest apologized to the claimant for getting him in trouble.

The claimant went back to the breakfast area. He talked to a coworker and decided that he would leave work that day. He did not contact the general manager or speak to anyone else in management.

The claimant later attempted to call the general manager but was not able to reach anyone. He returned for his paycheck, but it was not available. He was not paid for several weeks due to the 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

*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, aff’d Larson v. Employment Security Division, Superior Court 3JD No. 3 KN-91-1065 civil, March 4, 1993.*

The claimant left immediately after he was confronted in front of a guest. He did not seek out higher management to remedy the matter. He believed that he should not have to accept that behavior from a supervisor.

As in Larson, the claimant did not give the employer an opportunity to remedy his grievance before leaving his job.

#### DECISION

The determination issued on June 15, 2020 is **AFFIRMED**. Benefits are denied for the weeks ending March 21, 2020 through April 25, 2020. The three weeks are 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 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 appeal rights and procedures is enclosed.

Dated and mailed on August 31, 2020.

 Tom Mize

 Appeals Officer