

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 1606 **Hearing date:** November 3, 2020

**CLAIMANT: EMPLOYER:**

AMOS SWANSON STIRLING FRUIT & VEGETABEL CO

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Amos Swanson None

#### CASE HISTORY

The claimant timely appealed an August 19, 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 February 10, 2020. He last worked on March 3, 2020. At that time, he worked part time as a farm worker.

The claimant works seasonally in Alaska as an arborist. In the off season he purchased a plane with the intent of obtaining a commercial pilot’s license. The claimant brought his plane to Utah because the weather there is more conducive to getting the 250 flight hours needed for pilot certification.

While in Utah, the claimant met a commercial orchard owner and agreed to work in his orchard. The claimant finished pruning work on March 3, 2020. The employer had other work available, but the claimant had planned to return to Alaska for his seasonal work which was set to start in April. The claimant had planned to travel back to Alaska with his belongings by commercial airline in March, and then return to Utah to fly his plane home. The claimant’s travel plans were delayed by the COVID-19 pandemic and he ultimately left Utah in mid to late April.

#### 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 on March 3, 2020 because he intended to return to Alaska to resume his seasonal job in April.

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). The claimant did not establish that the work was a risk to his health, safety or morals, or that he 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.*

The claimant quit work to return to Alaska. He had to deal with the logistics of getting his belongings and his plane to Alaska before he started seasonal work in Alaska a month or more after his last day of work. His travel plans were delayed by the effects of the COVID-19 pandemic. Dealing with the logistics of moving his personal belongings and his plane is not a compelling reason to leave work.

The Tribunal finds the claimant voluntarily left suitable work without good cause as described in regulation 8 AAC 85.095(c) and AS 23.20.385(b). The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on August 19, 2020 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending March 14, 2020 through April 18, 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 November 12, 2020.

Rhonda Buness, Appeals Officer