

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 2093 **Hearing date:** March 4, 2021

**CLAIMANT: EMPLOYER:**

PULALASI WONG-SIN CONDUENT STATE HEALTHCARE LLC

TALX

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Pulalasi Wong-Sin None

#### CASE HISTORY

The claimant timely appealed an October 9, 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 or was discharged for misconduct connected with the work.

#### FINDINGS OF FACT

The claimant began work for the employer on July 1, 2019. She last worked on July 30, 2020. At that time, she worked full time as a customer service agent.

The claimant was unable to work after July 30, 2020 because her 6-year-old son had an injury on his leg and had a fever. The claimant worked from home, but her work required a high level of confidentiality and she could not have her son in the room with her while she was working. A week later, the claimant’s 7-year-old daughter was exposed to COVID-19 and tested positive for the virus. The claimant had to care for her children and quarantine because of her exposure. While quarantined, the claimant had to leave her home on August 6, 2020 and go stay in the garage of a family member’s home because of domestic problems in her home. She obtained a restraining order on August 7, 2020. She advised the employer that her children were still sick and she could not access her work equipment that was in her home.

On August 16, 2020, the claimant discussed the situation with her supervisor. The supervisor told her no additional leave was available and job protection under the Family Medical Leave Act was not available. The claimant asked if she could get additional work equipment but that was not allowed. The supervisor offered that if the claimant tested negative for COVID-19, she could work in the office. The claimant’s children were too sick to leave with anyone. The supervisor told the claimant her only option at that point was to resign and told her she would be eligible to be re-hired.

Two weeks later, the claimant contacted the employer because her children were well and she wanted to come back to work. She re-applied and was eventually told she would not be rehired because her attendance had not been satisfactory.

#### 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....

(2) was discharged for misconduct connected with the insured worker's last work.

**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).

(d) "Misconduct connected with the insured worker's work" as used in

AS 23.20.379(a)(2) means

(1) a claimant's conduct on the job, if the conduct shows a willful and wanton disregard of the employer's interest, as a claimant might show, for example, through gross or repeated negligence, willful violation of reasonable work rules, or deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee; willful and wanton disregard of the employer's interest does not arise solely from inefficiency, unsatisfactory performance as the result of inability or incapacity, inadvertence, ordinary negligence in isolated instances, or good faith errors in judgment or discretion....

**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 young children were sick and required her care.

Regulation 8 AAC 85.095(c)(2) holds that a claimant may have good cause to voluntarily quit work if she does so to provide care for an immediate family member with an illness or disability.

The Tribunal finds the claimant left work with good cause and the penalties of AS 23.20.379 are not appropriate.

#### DECISION

The determination issued on October 9, 2020 is **REVERSED.** Benefits are **ALLOWED** for the weeks ending August 22, 2020 through September 26, 2020, if otherwise eligible. The three weeks are restored to 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 March 5, 2021.

Rhonda Buness, Appeals Officer