

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 2131 **Hearing date:** March 9, 2021

**CLAIMANT: EMPLOYER:**

HANNA BORLAND ENGINEERED EQUIP CO OF AK INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Hanna Borland Alison Stafholm

#### CASE HISTORY

The claimant timely appealed an October 28, 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 May 28, 2019. She last worked on July 31, 2020. At that time, she worked full time as an inside salesperson.

On July 17, 2020, the claimant gave the employer notice that she would leave the work, with her estimated last day of work of being August 31, 2020. The claimant and her military spouse were divorcing and had requested “early dependent departure” so the military would send the claimant back to her original place of residence. The process was expected to take 3-4 weeks and then the claimant would be given a departure date.

After July 31, 2020, the claimant was off work because she had possibly been exposed to the COVID-19 virus and she required a test. The claimant decided to move her resignation date up to that date so she could prepare to move. The claimant was also negotiating to be hired by another employer who had a worksite in the area the claimant was moving to and she hoped to transfer to that worksite. The claimant was not offered work by that employer.

The claimant did not get her orders to move from the military until mid-September, and she relocated in early October 2020. The military’s process was delayed by the COVID-19 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

The claimant in this case voluntarily quit suitable work to prepare to relocate after a marital separation and to attempt to get hired by a company she could transfer with when she moved.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. The regulation allowed that a claimant may have good cause to quit work when they relocate to accompany or join a spouse after the spouse’s discharge from the armed forces. This was not the claimant’s circumstances.

The Division’s Benefit Policy Manual, Voluntary Leave, Personal Circumstances, 155.2 Home, Spouse, or Children in Another Location, holds:

1. *Employment of Spouse*

*To establish good cause when quitting work to accompany or join a spouse at a new location, it must be shown:*

* *The spouse has accepted new work, been transferred by his employer, or discharged by the military;*
* *It is impractical to commute from the new location;*
* *The move is in a timely manner in relation to leaving work.*

*Good cause can be established if the worker’s spouse accepts new work, is transferred by a current employer including the military, or is discharged by the military to a new location from which it is impractical to commute. Local commuting patterns should be considered when determining if the move is necessary.*

*Example: The discharge of a worker's military spouse or the transfer from one duty station to another under the direction of military orders gives the worker good cause for voluntarily leaving work, as long as the move is timely (9224967, September 4, 1992.)*

1. *Other Reasons to Move*

*Under the regulation, other reasons to move do not provide the claimant with good cause to quit. These other reasons may include housing difficulties, to move with a spouse who is attending school, to maintain the family unit, or to improve the family circumstances.*

*Example: In denying benefits to a claimant who quit to follow his wife to where she was attending school, the Commissioner held, " If the claimant had quit his job to attend academic instruction in another state, it would not be deemed a compelling reason. . . . Likewise, his wife's decision to move to another state on a temporary*

*basis to further her education cannot be considered a compelling reason for the claimant to quit his job." (96 2132, December 12, 1996)*

1. *Timing of the Move In addition, the worker must not leave work before it is necessary to do so. See VL 160.F. Time of Leaving for a complete discussion.*

The claimant in this matter did not leave work for one of the allowable reasons under the regulation. 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 her health, safety or morals, or that she 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.*

#### Considering Missall and the Division’s Benefit Policy Manual, the Tribunal cannot find that the claimant left work for a reason that be can considered good cause under regulation 8 AAC 85.095.

#### DECISION

The determination issued on October 28, 2020 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending August 15, 2020 through September 19, 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 March 11, 2021.

Rhonda Buness, Appeals Officer