

### APPEAL TRIBUNAL DECISION

**Docket number:** 20 2146 **Hearing date:** March 12, 2021

**CLAIMANT: EMPLOYER:**

KATHY MILLER HOPE COMMUNITY RESOURCES INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Kathy Miller None

#### CASE HISTORY

The claimant timely appealed an October 22, 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 October 7, 2005. She last worked on July 1, 2020. At that time, she worked full time as a direct service provider.

The claimant’s son and his family planned to visit the claimant in Kenai starting July 2, 2020 and stay in her home. State travel mandates at that time called for travelers to get a negative COVID-19 test or to self-quarantine for 14 days after arrival. The claimant’s son chose to quarantine instead of having his children tested for the virus.

The claimant advised the employer of her plans, and she was advised by the employer that she could not work with her client during the period her son and his family were quarantining in her home. The claimant had intended to work during that time. After being inside her home for 14 days, the claimant took the following week off to participate in outside activities with her family before they left.

The claimant was advised by the employer that she may be eligible for unemployment benefits during the quarantine period. She established a claim for unemployment benefits effective July 12, 2020. When the claimant learned that she would not be eligible for benefits for the week ending July 11, 2020 because she did not have an initial claim in place before that week ended, she requested and received sick leave pay from the employer for that week. The claimant received vacation pay for the week ending July 25, 2020 and she did not claim benefits for that week since she was busy with her family and was not available for work. The claimant returned to work for the employer immediately after the week off and ceased filing for benefits.

#### 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

Any time a claimant establishes a claim for unemployment benefits, the Division is required to examine the reason for the claimant’s unemployment. Only if the claimant is laid off due to a lack of work is there no potential penalty. The claimant in this case was not laid off due to lack of work. The Tribunal must first decide which party was responsible for the claimant’s unemployment at the time she established her claim.

A discharge is “a separation from work in which the employer takes the action which results in the separation, and the worker does not have the choice of remaining in employment." 8 AAC 85.010(20). Voluntary leaving means a separation from work in which the worker takes the action which results in the separation, and the worker does have the choice of remaining in employment. Swarm, Com. Dec. 87H-UI-265, September 29, 1987. Alden, Com. Dec. 85H-UI-320, January 17, 1986.

The claimant in this case was willing to work in the first week of her claim, but the employer’s policies to protect clients from the COVID-19 virus prevented the claimant from working while her family was quarantining in her home. The Tribunal finds it was the employer’s action that prevented the claimant from working at the time she established her claim for benefits, so the separation is a discharge.

Penalties are imposed if a claimant is discharged for misconduct, which is a willful disregard of the employer’s interests. The claimant in this case was off work because the employer’s policies would not allow her to work with clients while her son was quarantining in her home. The claimant actions in having her son visit in her home is not a willful disregard of the employer’s interests. The Tribunal finds the claimant was discharged for reason other than work-related misconduct.

#### DECISION

The determination issued on October 22, 2020 is **REVERSED** and **MODIFIED.** Benefits are **ALLOWED** under as 23.20.379(a)(2) for the weeks ending July 4, 2020 through August 8, 2020, if the claimant is 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 17, 2021.

Rhonda Buness, Appeals Officer