**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 0029 **Hearing date:** April 28, 2021

 June 11, 2021

**CLAIMANT: EMPLOYER:**

SHARON PETROVICH ALASKA FAMILY SERVICES INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Sharon Petrovich Pam Beachell

####  CASE HISTORY AND FINDINGS OF FACT - TIMELINESS

The claimant filed an appeal against an April 29, 2020 determination that denied benefits under AS 23.20.379 on the grounds that the claimant voluntarily quit suitable work without good cause. The Division mailed the determination to the claimant’s address of record on April 30, 2020. The claimant’s appeal was filed on December 18, 2020, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant recalled receiving the determination regarding her separation from employment. She called the Division as soon as she received the determination and requested to file an appeal. The claimant inquired about her appeal several times after that, and was told to send an email, or to call another number.

On December 14, 2020, the Division issued a determination that held the claimant was denied extended benefits under AS 23.20.406-409 as a result of the determination issued April 29, 2020. The claimant contacted the Division on December 18, 2020, and her appeal of both matters was taken that day.

#### PROVISIONS OF LAW - TIMELINESS

**AS 23.20.340 provides in part;**

 (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 - TIMELINESS

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

*The purposes and policies of the Act are not served by a strict application of the procedural requirements to the detriment of a person the statute is intended to serve, especially when no apparent prejudice would otherwise be caused to the Department. Estes v. Department of Labor, 625 P.2d 293 (Alaska 1981).*

*When a claimant approaches an unemployment insurance representative for instructions, it is the responsibility of that representative to provide complete and accurate information regarding the claimant’s request. Murphy, Com. Dec. No 87H-UI-283, September 29, 1987.*

*We find no material errors in the Tribunal's findings. However, we have previously ruled in Murphy, Com. Decision 87H-UI-283, Sept. 29, 1997, and other cases, that a claimant may rely on the instructions received from an authorized representative of the Employment Security Division. Such instructions may supersede instructions given in written form, such as claimant information handbooks or determinations depending on the circumstances. Vassar, Com. Dec. 96 0614, May 15, 1996.*

The claimant in this case contacted the Division soon after receiving the determination under appeal. She requested to file an appeal at that time. That the claimant’s appeal was not processed at that time or when she called to inquire later is a circumstance beyond the claimant’s control. The Tribunal finds the claimant had good cause to file a late appeal.

#### DECISION - TIMELINESS

The claimant’s appeal from the notice of determination issued on April 29, 2020 is **ACCEPTED** as timely filed.

#### CASE HISTORY - SEPARATION

The determination issued April 29, 2020 denied the claimant’s 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 - SEPARATION

The claimant began work for the employer in July 2002. She last worked on January 31, 2020. At that time, she worked full time as an eligibility technician.

In 2018, the claimant began to have problems with her new direct supervisor that caused the claimant to feel stressed and experience anxiety, depression and other medical symptoms. Almost a year before the work ended, the claimant’s doctor had suggested she leave the work to lessen her anxiety. The claimant was treated with medication for her anxiety. The claimant also felt that other team members did not communicate with her, despite the claimants attempts to get along, such as bringing in coffee and donuts. The claimant tried to transfer to other departments with different supervisors, but she was unsuccessful.

The claimant felt stressed because her supervisor would not speak directly to her. The claimant felt like she was interrupting her supervisor any time she asked the supervisor a question. The claimant described her worst interaction with her supervisor as a time the supervisor gave her a written warning because of complaints made by a client. The claimant called the client to apologize and was told the client had not complained about the claimant.

The final incident that caused the claimant to resign was when a complicated contract submitted by the claimant was returned to the employer by a state agency. The claimant had sought her supervisor’s advice in completing the contract, so she told the agency representative that her supervisor had given the claimant the wrong instructions. The claimant’s supervisor was upset and stopped talking to the claimant.

The claimant did not file a complaint against her supervisor with the employer’s human resources office. The claimant had spoken with the human resources representative about her supervisor, but the claimant did not request mediation or file a grievance and the human resources representative believed the claimant was just venting and she did not request the HR office intervene. The human resources representative and the employer’s new CEO witnessed the claimant crying in the hallway after an interaction with her supervisor shortly before she resigned. The claimant believed the employer should have known from that incident that intervention was required. At the time the claimant resigned, the HR representative was attempting to meet with the claimant and her manager about office communications in the claimant’s team. The claimant called out sick because of her stress on January 29 and 30, 2020. On January 31, 2020, the claimant sent the employer a letter of resignation effective immediately. The claimant described her complaints about her supervisor and co-workers in the letter.

#### PROVISIONS OF LAW - SEPARATION

**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 - SEPARATION

The claimant in this case voluntarily quit work because she was stressed by her relationship with her direct supervisor.

*An employee must objectively establish "a pattern of ongoing and persistent harassment severe enough to alter the conditions of employment" to succeed in a hostile work environment claim.* Draper v. Coeur Rochester, Inc., 147 F.3d 1104, 1108 (9th Cir. 1998). *The Department's presumption in benefits denial appeals is that the employee left without good cause. It is the claimant's obligation to overcome this presumption….*

*A worker has good cause for voluntarily leaving work because of a supervisor's actions only if the supervisor follows a course of conduct amounting to hostility, abuse, or unreasonable discrimination. In addition, the worker must make a reasonable attempt to resolve the matter prior to leaving work.* Griffith, Comm. Dec. 8822158, December 20, 1988, affirmed in Griffith v. State Department of Labor, Alaska Superior Court, No. 4FA-89-0120 Civil, September 25, 1989.

Although the workplace atmosphere was likely not ideal, the Tribunal finds claimant did not establish that her supervisor’s treatment of her amounted to hostility, abuse or unreasonable discrimination with the interactions that she described in the hearing.

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

The claimant did not allow the employer the opportunity to remedy her complaints about her supervisor by filing a formal complaint or requesting the human resources office intervene. At the point the human resources office was involved and attempting to meet with the claimant, the claimant resigned.

The claimant argued that the work was not suitable for her because she was suffering from stress related medical issues, however the claimant continued to work for over a year after her doctor advised her to leave the work for her stress, thus accepting the conditions.

Considering the claimant’s circumstances and the precedent decisions of the Commissioner cited above, the Tribunal cannot conclude that the claimant had good cause to voluntarily leave suitable work at the time she did. The penalties of AS 23.20.379 are appropriate.

#### DECISION - SEPARATION

The determination issued on April 29, 2020 is **AFFIRMED.** Benefits are remain **DENIED** for the weeks ending February 8, 2020 through March 14, 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 June 16, 2021.

 Rhonda Buness, Appeals Officer