

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 0090 **Hearing date:** June 17, 2021

**CLAIMANT: EMPLOYER:**

GEOFFREY TAYNER L3HARRIS TECHNOLOGIES INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Geoffrey Tayner None

#### CASE HISTORY

The claimant timely appealed a December 30, 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 March 8, 2020. He last worked on April 16, 2020. At that time, he worked full-time as a pilot in training.

The claimant was completing special training required to fly for the employer in Afghanistan. The claimant had recently failed his initial check ride in a flight simulator, which was not unusual. The employer provided additional flight simulator time and the claimant was scheduled to take his second check ride but it was cancelled by the employer and the claimant was required to report to the employer’s office on April 17, 2020. At that time, the claimant was advised that his training would not continue because of the COVID-19 pandemic and he was given two options. The claimant was advised that if he resigned at that time he would remain eligible for re-hire, but if he went home and waited for the employer to discharge him, he would not be considered eligible for re-hire.

The claimant wanted to maintain the potential to work for the employer in the future, so he provided a resignation letter. The claimant’s supervisor told him the employer was not satisfied with his training and advised the claimant to get more experience and reapply with the employer in the future.

#### 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

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 employer in this case took the action that ended the employment relationship when they told the claimant to resign or go home and wait to be discharged. The claimant had no choice to continue working, so his resignation letter is moot. The separation is a discharge, so the Tribunal will consider if the discharge was for work related misconduct.

The claimant understood that he was being released from the work because of the COVID-19 pandemic and its effects on the employer. He was also advised the employer was dissatisfied with his training and believed he needed more experience. Neither circumstance indicates that the claimant too actions that could be considered a willful disregard of the employer’s interest. Regulation 8 AAC 85.095(d) holds that an inability to perform the work is not misconduct. The employer’s business decision based on the circumstance of a world-wide pandemic does not indicate misconduct on the claimant’s part.

The Tribunal concludes the claimant in this case was discharged for reasons other than misconduct. The penalties of AS 23.20.379 are not appropriate. The decision is modified to show the claimant was discharged.

#### DECISION

The determination issued on December 30, 2020 is **MODIFIED** and **REVERSED.** Benefits are **ALLOWED** under AS 23.20.379(a)(2) for the weeks ending April 25, 2020 through May 30, 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 June 23, 2021.

Rhonda Buness, Appeals Officer