

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 0124 **Hearing date:** May 7, 2021

**CLAIMANT: EMPLOYER:**

CARRIE KIGNAK MAXIM HEALTHCARE SERVICES INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Carrie Kignak Laura Corbitt

#### CASE HISTORY

The employer timely appealed a November 23, 2020 determination which allowed the claimant’s benefits without penalty 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 7, 2020. She last worked on July 11, 2020. At that time, she worked part time as a companion caregiver.

On her last day, the claimant was advised she may have been exposed to the COVID-19 virus and the employer required her to obtain a negative test before returning to work. The claimant established a claim for unemployment insurance benefits effective July 12, 2020. The claimant advised the employer when she had a negative test result and she returned to work on July 24, 2020.

#### 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

Any time a claimant establishes a claim for benefits, the Division is required to examine the reason the claimant is unemployed and determine if penalties are appropriate under AS 23.20.379.

Regulation 8 AAC 85.095(c)(1) holds that a claimant may have good cause to voluntarily leave work if they do so 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.

The claimant in this case stopped working because she was potentially exposed to the COVID-19 virus. The claimant returned to work after getting a negative test, as required by the employer. The Tribunal finds the claimant had good cause to leave the work at the time she did. The penalties of AS 23.20.379 are not appropriate.

#### DECISION

The determination issued on November 23, 2020 is **AFFIRMED.** Benefits remain **ALLOWED** for the weeks ending July 18, 2020 through August 22, 2020, if otherwise eligible. The three weeks are not reduced from 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 May 12, 2021.

Rhonda Buness, Appeals Officer