

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 0722 **Hearing date:** September 9, 2021

**CLAIMANT: EMPLOYER:**

ADAM WRHIGHT NORTHERN HOSPITALITY GROUP

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Adam Richardson None

####  CASE HISTORY

The claimant filed an appeal against two determinations. First is a February 24, 2021 determination that denied benefits under AS 23.20.379 on the ground that the claimant voluntarily left suitable work without good cause or was discharged for work-related misconduct.

The second determination was issued on February 24, 2021, and denied the claimant’s benefits under AS 23.20.406(h), on the ground that the claimant was not eligible for extended benefits.

**FINDINGS OF FACT**

The claimant began work for the employer in July 2016. He last worked on Monday, June 8, 2020. At that time, he worked full time and was paid an hourly wage plus tips. He established an unemployment insurance claim effective March 22, 2020.

The claimant was furloughed due to COVID mandates. He was advised that the employer was covering his insurance during that furlough. He returned from the mandated closure. He was paid and noticed that a large amount was deducted from his pay. The claimant covered his shifts and requested to speak to the owners. He also left a message for human resources.

The claimant did not get a reply from human resources. He did not hear from the owners about his request for a meeting. He noted that he was removed from the schedule. He then received a letter advising that he was no longer covered under the employer’s insurance program due to his termination.

The claimant did not return to work in other employment until January 2, 2021. He did not work during the disqualification period.

#### PROVISIONS OF LAW

**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.

#### AS 23.20.406 provides in part:

#### (h) An individual is not eligible to receive extended benefits for any week of unemployment in the individual's eligibility period if the individual has been disqualified for benefits because the individual voluntarily left work, was discharged for misconduct, or refused an offer of suitable work, unless the disqualification imposed for those reasons has been terminated in accordance with AS 23.20.379(d).

#### AS 23.20.379 provides in part:

1. 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; or

 (2) was discharged for misconduct connected with the insured worker's last work.

1. The disqualification required in (a) and (b) of this section is terminated if the insured worker returns to employment and earns at least eight times the insured worker's weekly benefit amount.

**8 AAC 85.095 provides, in part:**

1. A disqualification under AS 23.20.379 (a) and (b) remains in effect for six consecutive weeks or until terminated under the conditions of AS 23.20.379 (d), whichever is less. The disqualification will be terminated immediately following the end of the week in which a claimant has earned, for all employment during the disqualification period, at least eight times his weekly benefit amount, excluding any allowance for dependents. The termination of the disqualification period will not restore benefits denied for weeks ending before the termination. The termination does not restore a reduction in maximum potential benefits made under AS 23.20.379 (c).

#### CONCLUSION

*As a matter of law, Tyrell could not have "voluntarily left" his job unless he intended to leave his job . . . "job abandonment" . . . does not automatically mandate the conclusion that Tyrell intended to quit his job - and a finding of such intent is the sine qua non of a finding that Tyrell "voluntarily quit.”* William Tyrell v. Department of Labor, 1KE-92-1364 CI, (AK Super. Ct., November 4, 1993).

*Job abandonment is a contractual, not statutory term, and it does not automatically mandate a conclusion that a claimant intended to quit his job*. Tyrell v. Dept. of Labor, AK Superior Ct. 1stJD No. 1KE-92-1364 Civil (November 4, 1993).

“In Tyrell v. Dept. of Labor, No. IKE-92-1364 CI, November 4, 1993 . . . the Superior Court held that a claimant could not have voluntarily left his job unless he "*intended*" to leave his job. The claimant had walked off the job without approved leave over a dispute with his employer over pay.

Similar to Tyrell, the claimant, in this matter, the requested to meet with the owners of the business over a discrepancy in his pay. He showed no intent to quit. He had his shifts covered before he requested to meet with the owners. Therefore, the claimant was discharged.

The employer did not appear for the hearing and has not shown that the claimant was discharged for misconduct.

From the Division’s Benefit Policy Manual, MS 160.05:

*B. Purge of Disqualification*

*A claimant who has been disqualified from receiving benefits because of voluntary leaving work without good cause, misconduct in connection with the work, or failure to apply for or to accept suitable work is not eligible for EB. The claimant can purge the disqualification by returning to work during the disqualification period and earning eight times their weekly benefit amount, or possibly through a timely appeal process. No other factors or circumstances may be considered (Storm, Docket 98 0622, April 7, 1998.)*

The claimant did not purge the penalty imposed under AS 23.20.379(a) by returning to work during the disqualification period and earning eight times the weekly benefit amount. The matter is moot as the Tribunal reversed the disqualification.

#### DECISION

The appeal of the determination issued on February 24, 2020 denying benefits based on the separation is **REVERSED.** The claimant is allowed benefits for the weeks ending June 6, 2020 through July 11, 2020. The three weeks are restored to the claimant’s maximum benefits.

The determination issued on February 24, 2020 is **REVERSED**. Extended benefits are allowed based on the reason for separation.

#### APPEAL RIGHTS

This decision is final unless an appeal is filed 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 appeal rights and procedures is enclosed.

Dated and mailed on September 13, 2021.

 Tom Mize

 Appeals Officer