

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 1367 **Hearing date:** November 16, 2021

**CLAIMANT: EMPLOYER:**

DEBORAH ANINGAYOU NOME COMMUNITY CENTER

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Deborah Aningayou None

#### CASE HISTORY

The claimant filed an appeal against two determinations. First is a July 6, 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 September 16, 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 November 2013. She last worked on or about November 24, 2020. At that time, she worked full time as a seasonal employee. She was paid an hourly wage. The claimant established a claim for unemployment insurance benefits effective October 11, 2020.

The claimant quit work because she was afraid that she might get COVID-19. The claimant and her coworkers wore masks but the clientele that they served did not wear masks. The employer advised its employees to stay home if they were sick.

The claimant began to have stomach issues. She went to the doctor and was given medication for the stomach issues. The doctor advised her that she did not have COVID-19. She determined that she should quit work due to the fear of catching COVID-19. The doctor did not advise her to leave work.

The claimant has not worked for any employer since leaving work in November 2020.

#### PROVISIONS OF LAW

#### 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

tab (1) left the insured worker's last suitable work voluntarily without good cause; or

tab(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.
2. **AAC 85.095 provides, in part:**

(a) 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).

1. 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 23.20.406 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).

#### CONCLUSION

The claimant quit her employment due to her fear of catching COVID-19. The fear of catching a disease is not good cause under the regulation for leaving employment. Regulation 8 AAC 85.095 specifically lists seven reasons for leaving work that are considered good cause. As the claimant did not leave work for one of these reasons,

sub-paragraph eight requires that the Department consider other factors provided in AS 23.20.385, Suitable Work, above.

The job was not a risk to the claimant’s safety or morals. The claimant had been engaged in this work for several years. The fear of catching a disease is not in and of itself a risk to one’s health. The claimant has not shown that her reasons for leaving her employment are among the factors that would influence a reasonably prudent person to leave employment.

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 claimant is not eligible for extended benefits under AS 23.20.406.

#### DECISION

The determination issued on July 6, 2021 is **AFFIRMED**. Benefits are denied for the weeks ending December 5, 2020 through January 9, 2021. The three weeks are reduced from the claimant’s maximum benefits. The claimant may not be eligible for extended benefits under AS 23.20.406-409.

The determination issued on September 16, 2021 is **AFFIRMED**. Extended benefits remain denied.

#### 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 November 17, 2021.

Tom Mize

Appeals Officer