

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1443 **Hearing date:** December 2, 2021

**CLAIMANT: EMPLOYER:**

EMLYN HERNANDEZ STATE OF ALASKA

DEPT OF ADMINISTRATION

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Emlyn Hernandez None

#### CASE HISTORY

The claimant timely appealed a July 20, 2021 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.

#### FINDINGS OF FACT

The claimant began work for the employer on November 8, 2020. She last worked on April 30, 2021. At that time, she worked full-time as an accounting clerk.

The claimant had advised the employer at the time of her hire that she expected to relocate with her military husband in the near future. On about April 25, 2021, the claimant’s husband was advised that he would have to leave on May 15, 2021, and that the location of his transfer had changed. The claimant advised the employer on April 26, 2021 that April 30, 2021 would be her last day.

The claimant and her husband had to inventory and pack their belongings, divide and mark items to be shipped, meet with movers, ship one vehicle and prepare the other for a road trip, get documents in order for travel through Canada, and make new arrangements for arrival at the changed destination.

#### 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

The claimant in this case voluntarily quit work to relocate with her spouse, who was being relocated by the military. Regulation 8 AAC 85.095(c)(4) holds that a claimant may have good cause to quit work to relocate with a spouse because of the spouse’s employment. The claimant departed Alaska sixteen days after her last day of work.

In Anderson, Com. Dec. 95 2430, December 15, 1995, the Commissioner held in part;

*We have previously held that a claimant who quits work more than a few days before it is necessary because of a spousal transfer negates the good cause supplied by the primary reason for the quit. We still support that reasoning. However, in this case we do not believe the 18 days between quit and transfer negated good cause. The claimant had several tasks to accomplish before the move, including packing for the long drive out of state and preparing for the household movers.*

As in Anderson, the Tribunal does not find 15 days to prepare to relocate to be excessive in this case. The claimant was only notified three weeks in advance of the departure date and at the same time learned that the transfer would be to a different part of the country.

The Tribunal concludes the claimant in this case had good cause to voluntarily quit work at the time she did. The penalties of AS 23.20.379 are not appropriate.

#### DECISION

The determination issued on July 20, 2021 is **REVERSED.** Benefits are **ALLOWED** for the weeks ending May 8, 2021 through June 12, 2021, 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 December 10, 2021.

Rhonda Buness, Appeals Officer