

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 1564 **Hearing date:** January 27, 2022

**CLAIMANT: EMPLOYER:**

ERICH MUTH NANA MANAGEMENT SERVICES LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Erich Muth None

#### CASE HISTORY AND FINDINGS OF FACT - TIMELINESS

The claimant filed an appeal against a June 28, 2021 determination that denied benefits under AS 23.20.379 on the grounds that the claimant voluntarily quit suitable work without good cause. The Division mailed the determination to the claimant’s address of record on June 29, 2021. The claimant’s appeal was filed on August 5, 2021, giving rise to the issue of the timeliness of the claimant’s appeal.

The claimant recalled receiving the determination and calling the Division’s claim center to file an appeal. He was advised he would receive information in the mail about his appeal. The claimant sent an email to the Appeals Office on August 5, 2021 because he had not received anything about his appeal. He was advised there was no record that he had filed an appeal and his appeal was taken that day.

#### PROVISIONS OF LAW - TIMELINESS

**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.

#### CONCLUSION - TIMELINESS

An appellant has the burden to establish some circumstance beyond the appellant’s control prevented the timely filing of the appeal. The claimant in this case held that filed his appeal within the 30-day appeal period.

*When a claimant approaches an unemployment insurance representative for instructions, it is the responsibility of that representative to provide complete and accurate information regarding the claimant’s request. Murphy, Com. Dec. No 87H-UI-283, September 29, 1987.*

*We find no material errors in the Tribunal's findings. However, we have previously ruled in Murphy, Com. Decision 87H-UI-283, Sept. 29, 1997, and other cases, that a claimant may rely on the instructions received from an authorized representative of the Employment Security Division. Such instructions may supersede instructions given in written form, such as claimant information handbooks or determinations depending on the circumstances. Vassar, Com. Dec. 96 0614, May 15, 1996.*

Considering the above-cited decisions of the Commissioner and the claimant’s circumstances, the Tribunal finds the claimant filed a timely appeal but his appeal was not initially accept for some reason beyond the claimant’s control.

#### DECISION - TIMELINESS

The claimant’s appeal from the notice of determination issued on June 28, 2021 is **ACCEPTED** as timely filed.

#### CASE HISTORY - SEPARATION

The determination issued June 28, 2021 denied the claimant’s 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 - SEPARATION

The claimant began work for the employer on May 2, 2021. He last worked on June 14, 2021. At that time, he worked full time, three weeks on and three weeks off at the employer’s remote worksite.

The claimant was hired to work in the kitchen. The claimant’s direct supervisor was a friend he had worked with at a previous job. The claimant’s supervisor sent him lewd pictures and made sexual advances, which the claimant declined. After his rejection, the supervisor continued to harass him sexually. She also pressured the claimant to perform his work faster, which the claimant did not see her doing to other employees. He asked the supervisor to stop the harassment.

When the claimant returned for his second rotation of work, he initially had a different supervisor. That supervisor harassed the claimant about his sexual orientation. The claimant complained to his first supervisor when she returned to work and she advised him to get used to it. The first supervisor’s sexual advances did not continue, but she did continue to have unprofessional conversations with the claimant. The claimant kept screenshots of the inappropriate conversations and pictures she sent.

The claimant requested the camp manager transfer him to another job. The camp manager initially declined to move the claimant to another job. The claimant told the camp manager about the harassment he received from the second kitchen supervisor. The manager asked the claimant if he wanted to file a sexual harassment complaint. The claimant declined. He did not want to be seen by the employer as “rocking the boat,” as it might affect his future ability to be hired at one of the employer’s many worksites. The claimant did not report any of his first supervisor’s actions to the manager or to the employer’s human resources office. The claimant did not want to hurt his friend’s career or his own future prospects with the employer.

The claimant decided to leave the work and gave notice that June 28, 2021 would be his last day of work. The employer accepted his resignation as of June 14, 2021 and paid the claimant as if he had worked his scheduled shifts through his resignation date. The camp manager moved the claimant to another position outside the kitchen for the last two shifts the claimant worked.

#### PROVISIONS OF LAW - SEPARATION

**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 - SEPARATION

Alaska Statute 23.20.379 requires the Division to examine the reason a claimant is unemployed and determine if penalties apply. A claimant who voluntarily quits must show they had good cause to do so. Regulation 8 AAC 85.095(c)(3) holds that a claimant may have good cause to voluntarily leave work when he does so 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. The claimant in this case voluntarily quit work because he was being harassed at work by two supervisors.

The Commissioner of the Department of Labor and Workforce Development has long held that in order to show good cause for voluntarily quitting work, a claimant must exhaust reasonable alternatives before leaving the work.

*It is a long standing holding of the Department that even if a claimant establishes good cause for leaving work, it must still be determined that the worker pursued reasonable alternatives in an effort to preserve the employment relationship. Walsh, Comm. Decision 88H-UI-011, March 15, 1988. That is not to say the claimant must pursue all alternatives, but when an employer has a grievance policy in place and communicates that to the employees, a reasonable alternative to quitting would be to pursue such a grievance. Stiehm, Comm. Dec. 9427588, July 29, 1994, affirmed in Kalen-Brown, Comm. Dec. 04 1952, December 13, 2004.*

*We have ruled in cases similar to this that even where a worker has an adequate reason for leaving work, the worker must attempt to remedy the situation before leaving in order to escape disqualification under AS 23.20.379. The worker must give the employer a chance to remedy his grievance. Larson, Com. Dec. 9121530, Nov. 8, 1991, affirmed, Larson v. Employment Security Division, Superior Court 3JD No. 3 KN-91-1065 civil, March 4, 1993.*

The claimant in this case did not give the employer an opportunity to fix the problems he was having at work. He told the camp manager he was having problems with his supervisors in the kitchen, but declined to file a sexual harassment complaint against the second supervisor and never mentioned the harassment of his female supervisor. The claimant kept screen shots of harassing communications but did not share them with the employer’s human resources office. The claimant’s reasons for not pursuing reasonable alternatives because he did not want to affect future employment are based on speculation. The claimant has not established that he pursued reasonable alternatives to leaving the work.

The Tribunal concludes the claimant voluntarily quit suitable work without good cause. The penalties of AS 23.20.379 are appropriate.

#### DECISION - SEPARATION

The determination issued on June 28, 2021 is**.** Benefits remain **DENIED** for the weeks ending June 19, 2021 through July 24, 2021. The three weeks remain reduced from the claimant’s maximum benefits. The claimant may not be eligible 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 February 1, 2022.

Rhonda Buness, Appeals Officer