

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1585 **Hearing date:** 21 1585

**CLAIMANT: EMPLOYER:**

CHATTIAN APATIKI SOUTHCENTRAL FOUNDATION

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Chattian Apatiki None

#### CASE HISTORY

The claimant timely appealed a July 21, 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 in September 2015. She last worked on April 3, 2020. At that time, she worked full-time as an administrative clerk.

In March 2020, the claimant gave the employer two weeks notice that she was voluntarily quitting. The claimant’s decision to quit was based on concerns about the beginning of the COVID-19 pandemic. The claimant’s daughter’s school closed mid-March and the claimant decided to hunker down with her child’s father to reduce exposure and he did not want the claimant to bring the virus home from her work. The claimant held that she could not afford to pay for childcare while school was closed, but at the time she quit her daughter’s father was working from home and the daughter, who was 9-year old at that time, could stay with her father.

The claimant also held she quit in part to provide care to her elderly mother who does not drive. The claimant was required to run errands and deliver groceries to reduce her mother’s exposure to the virus.

The claimant did not recall if she requested a leave of absence. She decided to leave the work because she was not sure how bad the pandemic might get.

#### 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

Alaska Statute 23.20.379 requires the Division to examine the reason the claimant is unemployed at the time they file a claim for benefits. Penalties are required if a claimant voluntarily quits work without good cause as defined in regulation 8 AAC 85.095(c).

The regulation provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. The claimant in this matter did not leave work for one of the allowable reasons. The claimant held that caring for her mother was part of the reason she quit, however, delivering groceries and running errands can be accomplished outside of normal work hours and do not provide good cause for quitting work. The regulation also directs the Department to consider the suitability of the work as laid out in Alaska Statute 23.20.385(b). The claimant did not establish that the work itself was a risk to her health, safety or morals, or that she was not physically fit for the work. This leaves the Tribunal to consider other factors that would influence a reasonably prudent person in the claimant’s circumstances.

In Missall, Com. Dec. 8924740, April 17, 1990, the Commissioner of Labor summarized Department policy regarding what constitutes good cause for voluntarily leaving work. The Commissioner held, in part:

*The basic definition of good cause is 'circumstances so compelling in nature as to leave the individual no reasonable alternative.' (Cite omitted.) A compelling circumstance is one 'such that the reasonable and prudent person would be justified in quitting his job under similar circumstances.' (Cite omitted). Therefore, the definition of good cause contains two elements; the reason for the quit must be compelling, and the worker must exhaust all reasonable alternatives before quitting.*

The claimant has not established that she quit the work on advice of a doctor or because of any particular risk factors of the work itself or of her personal health. Although her daughter’s school was closed, the child’s father worked from home and could provide care for the child at that time. The claimant quit work because she was unsure how bad the pandemic would get. She did not request a leave of absence to protect her employment while waiting to see. The claimant has not established that she had a compelling reason to leave work at the time she did and that she exhausted reasonable alternatives before quitting.

The Tribunal cannot conclude that the claimant had good cause under the regulation to leave work at the time she did. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on July 21, 2021 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending April 11, 2020 through May 16, 2020. 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 January 11, 2022.

Rhonda Buness, Appeals Officer