

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1634 **Hearing date:** January 11, 2022

**CLAIMANT: EMPLOYER:**

AHNE SCHIELD TUNDRA TINKERER LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Ahne Sheild None

#### CASE HISTORY

The claimant timely appealed a July 28, 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 September 2, 2020. She last worked on April 28, 2021. At that time, she worked part-time as a general assistant.

The claimant was experiencing some cognitive and emotional issues and was actively seeking mental health diagnosis and care. The issues caused the claimant to have tunnel vision and have jumbled thoughts and affected her ability to perform new tasks. The claimant has fibromyalgia and pain from that condition exacerbates emotional issues. The claimant’s main stressor at work was a co-owner, who the claimant felt was demeaning and condescending in his treatment of her and discouraged the claimant from asking questions but expected her to complete unfamiliar tasks. On one occasion, the owner asked the claimant to pick up keys from a client and check the mail and bring it to him. The claimant did as instructed, returning the keys to the client on her way. The owner had expected the claimant to bring the keys to him, although he had not said that, and he reprimanded the claimant for not listening and following instructions, which caused the claimant stress. The claimant often became emotional when stressed and would cry when she was reprimanded, which further upset the owner.

The claimant had spoken with the other owner about her issues with the owner’s husband, but did not tell her that she was planning to leave the work because of the husband’s treatment of her.

The claimant began having panic attacks before and after work because of the emotional stress she felt. The claimant had decided to seek other work that was less stressful. The claimant gave the employer one month’s advance notice that she was resigning, with her last day to be about May 15, 2021. The claimant gave the employer a lengthy notice because they had provided her with housing in an emergency situation and she did not want to leave them short-handed.

On May 7, 2021, the claimant was off work when she received a text from the head housekeeper, who was a supervisor of the claimant, asking the location of some towels the claimant had folded. The claimant was having problems processing written communications, so she went to the worksite. The claimant had a confrontation with the housekeeper and she felt the housekeeper was disrespectful to her. The claimant raised her voice to the housekeeper. The claimant mentioned that she was affected by post-traumatic stress syndrome. The housekeeper told the claimant she was selfish and that the staff was tired of tip-toeing around her. The claimant told the housekeeper she quit effective immediately and gathered her notes and left. The claimant did not consider calling the owner, who was out of town, before resigning because she was very upset.

#### 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 that the Division examine the reason for a claimant’s unemployment and provides that penalties are applied if the claimant voluntarily left suitable work without good cause.

The claimant held that she quit because of her medical condition. Regulation 8 AAC 85.095(c)(1) holds that a claimant may have good cause to leave work when she does so 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.

The claimant in this case gave the employer advance notice that she was voluntarily leaving the work due to stress caused by a medical condition and a supervisor’s treatment of her. She then quit before her intended resignation date after having a confrontation with a supervisor. The claimant held that her medical condition, undiagnosed at the time, and additional stress caused by a co-owner gave her good cause to voluntarily quit the work.

The Division’s Benefit Policy Manual, VL 385, Relation of Alleged Cause to *Leaving, holds:*

1. *Proximate Cause*
2. *Close in time*

*In order to be good cause for leaving, the incident or circumstance allegedly causing the quit must be close in time to the quit itself. A single circumstance remote in time from the quit cannot be good cause for leaving. In addition, the longer a worker remains employed under the objectionable circumstances, the less weight can be given to those circumstances in determining the true cause of the leaving. The Commissioner has stated, "The establishment of good cause for leaving work is dependent, among other things, on the proximity of the incident creating the quit to the quit itself." (82H-UI-184)*

*Example: A claimant, employed as an acting supervisor, was passed over for promotion to the permanent supervisor's position, and was unable to get along with the new supervisor. He consulted a physician who indicated that he "might be getting an ulcer." The physician advised the claimant to quit his job because of his health problems. However, the claimant worked an additional five weeks before giving notice, because he wanted to see if things improved with his supervisor. He did not advise the next level of authority of any of his problems. The Commissioner decided that he had left work for a non-compelling reason because although the claimant was advised by his doctor to quit, the claimant removed that as proximate cause for the quit by working an additional five weeks before giving notice. At the time he quit, he did so because he had decided it "just wouldn't work out." However he gave the employer no opportunity to rectify the situation. (82H-UI-184, above)*

The claimant in this case quit right after a confrontation with a supervisor. Her quit caused her to become unemployed earlier than she had planned and that circumstance will be considered in determining if the claimant had good cause to leave the work at the time she quit.

The claimant quit at that time because she felt the supervisor was being disrespectful in calling her selfish and that staff were tired of tip-toing around her.

*A worker has good cause for voluntarily leaving work because of a supervisor's actions only if the supervisor follows a course of conduct amounting to hostility, abuse, or unreasonable discrimination. In addition, the worker must make a reasonable attempt to resolve the matter prior to leaving work. Griffith, Com. Dec. 8822158, December 20, 1988, aff'd Griffith v. State Department of Labor, Alaska Superior Court, No. 4FA-89-0120 Civil, September 25, 1989.*

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 voluntarily quit work at the time she did because of a confrontation with a supervisor. The claimant did not establish that the supervisor’s treatment of her was part of a course of conduct amounting to hostility, abuse or unreasonable discrimination. The claimant quit immediately and did not contact the owner. The claimant held that her medical condition contributed to her decision to quit at that time because it affected her emotional behavior. However, the claimant was not working at the time the quit and had many alternatives actions to quitting such as walking away, calling the employer or seeking assistance from a health care provider.

The claimant has not established that her reason for quitting was compelling or that she had no reasonable alternatives but to leave the work. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on July 28, 2021 is **AFFIRMED.** Benefits are **DENIED** for the weeks ending May 8, 2021 through June 12, 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 January 21, 2022.

Rhonda Buness, Appeals Officer