

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1645 **Hearing date:** February 4, 2022

**CLAIMANT: EMPLOYER:**

SALIMA JOHNSON SAFEWAY INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Salima Johnson None

#### CASE HISTORY

The claimant timely appealed an August 10, 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 or was discharged for misconduct connected with the work.

#### FINDINGS OF FACT

The claimant began work for the employer on August 30, 2019. She last worked about May 13, 2020. At that time, she last worked part-time as a cashier.

In February 2021, the claimant complained to the employer about being scheduled for many shifts of 45 minutes or an hour and half. Union requirements were that employees be scheduled for four or more hours per shift. The claimant found that she was not listed on the employer’s online work schedule for February 26-28, 2021, and she was marked as “unavailable” on the schedule. The claimant had not advised the employer that she was not available for work. The claimant could not reach her supervisor or other managers by phone and her messages were not returned. The claimant went to the store several times to talk to manager and at one point she was told by an assistant manager that she did not know to get out of the store.

In May 2021, the claimant spoke with a manager she knew and was told she was marked as being out due to the COVID-19 pandemic. The claimant told the manager that was not correct, and she wanted to work. The claimant was instructed to complete computer training May 13-20, 2021. She was paid for the training, but was never scheduled to work, despite talking to managers on several subsequent occasions.

#### 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....

(2) was discharged for misconduct connected with the insured worker's last work.

**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).

(d) "Misconduct connected with the insured worker's work" as used in

AS 23.20.379(a)(2) means

(1) a claimant's conduct on the job, if the conduct shows a willful and wanton disregard of the employer's interest, as a claimant might show, for example, through gross or repeated negligence, willful violation of reasonable work rules, or deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee; willful and wanton disregard of the employer's interest does not arise solely from inefficiency, unsatisfactory performance as the result of inability or incapacity, inadvertence, ordinary negligence in isolated instances, or good faith errors in judgment or discretion....

**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 was removed from the work schedule and marked as unavailable for work due to COVID-19 reasons. The claimant denied that she ever requested to stop working. She then was paid to take computer training and was not scheduled for further work after the training.

A discharge is “a separation from work in which the employer takes the action which results in the separation, and the worker does not have the choice of remaining in employment." 8 AAC 85.010(20). Voluntary leaving means a separation from work in which the worker takes the action which results in the separation, and the worker does have the choice of remaining in employment. Swarm, Com. Dec. 87H-UI-265, September 29, 1987. Alden, Com. Dec. 85H-UI-320, January 17, 1986.

The Tribunal finds the employer in this case took the action that ended the employment relationship when they stopped scheduling the claimant for work without explanation in February 2021, and again when they did not schedule her for work after she completed computer training in May 2021, effectively discharging the claimant. The employer did not participate in the hearing, relying on the hearsay documents in the record. The record does not indicate the claimant was discharged for any actions that could be considered misconduct, so the Tribunal concludes the claimant was discharged for reasons other than misconduct.

The penalties of 23.20.379 are not appropriate in this case. The potential disqualification date is adjusted to reflect that the claimant’s last work ended May 20, 2021.

#### DECISION

The determination issued on August 10, 2021 is **MODIFIED** and **REVERSED.** Benefits are **ALLOWED** for the weeks ending May 22, 2021 through June 26, 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 February 23, 2022.

Rhonda Buness, Appeals Officer