



APPEAL TRIBUNAL DECISION

Docket number: 21 1649 **Hearing date:** January 6 & January 18, 2022

CLAIMANT:

FREDERICK SLATHER

EMPLOYER:

BILIKIN INVESTMENT GROUP

CLAIMANT APPEARANCES:

Frederick Slather

EMPLOYER APPEARANCES:

None

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a July 16, 2021, determination which denied benefits under Alaska Statute 23.20.379. A hearing was held on January 6, 2022. The hearing was held open until January 18, 2022, to give the claimant additional time to gather specific facts on the timeline of events to support his case. In the January 6, 2022 hearing, the claimant agreed to continue the hearing on January 18, 2022, at 9:30 a.m. On the date and time of the continued hearing, the Appeals officer called the claimant's phone number. The call rang several times and then went to voice mail. The Appeals Officer left a message advising the claimant to return the call within fifteen minutes. At 12:29 p.m. on January 18, 2022, the claimant called the Appeals office and left a message stating he accidentally hung up on the call, and he just received the voice mail message. The Appeals officer granted the claimant an opportunity to provide any additional details he wished to present in writing by 5 p.m. on January 25, 2022.

The issue before the Appeal Tribunal is whether the claimant voluntarily quit suitable work without good cause. Specifically, if he quit work before it was necessary to attend an approved vocational training program.

FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective August 30, 2020. He reopened the claim effective June 2, 2021, when he stopped working to prepare to attend school.

The claimant sent a text message to the employer on May 16, 2021, stating he was going to stop working to get ready for training. The claimant was trying to obtain a grant to attend a four-week-long CDL training course in Palmer, Alaska.

On June 3, 2021, the claimant reinstated his communication with a State of Alaska Career Support Specialist. To meet the requirements of the grant, he enrolled in GED courses, sent in bank statements, pay information, and other information to support the training would increase his potential employment possibilities. He also had to obtain a CDL permit and perform work searches.

The grant was approved on July 6, 2021, and the training began on July 12, 2021.

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

Under 8 AAC 85.095(c)(5), quitting unskilled work to attend vocational training can be compelling if the claimant *immediately* entered the training after separating from employment.

The claimant, in this case, stopped working on May 16, 2021. His vocational training program began on July 12, 2021, which is approximately eight weeks

later. When considering what constitutes “immediately upon separation from work” there is some leniency in Department precedent to allow a short period of time, usually three to ten days, between quitting work and beginning training when there are extenuating circumstances and justification for the delay. For example, individuals may have to relocate to attend training. Therefore, it is the compelling nature of the claimant’s circumstances and justification for the delay that is determinative.

In this case, the claimant has shown there were many tasks and projects that had to be completed before he was able to obtain funding for the training. However, the gap between quitting work and starting training was too long. Many of the tasks involved in obtaining the funding could have been done outside of work hours, during lunch breaks, on the weekends or by asking for a few hours off work. Furthermore, it was almost two weeks between when the claimant quit work and reestablished his communication with the Career counselor. Therefore, good cause for quitting work prior to attending vocational training was not established.

DECISION

The determination issued on July 16, 2021, is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending May 15, 2021 through June 19, 2021. The three weeks are 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 2, 2022.

Kimberly Westover

Kimberly Westover, Appeals Officer