

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1690 **Hearing date:** February 9, 2022

February 17, 2022

**CLAIMANT: EMPLOYER:**

SARAH LAMP STATE OF ALASKA

DEPARTMENT OF LAW

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Sarah Lamp None

#### CASE HISTORY

The claimant timely appealed an August 17, 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 December 26, 2017. She last worked on June 11, 2021. At that time, she worked full-time as a law office assistant.

The claimant felt that she was being harassed and bullied at work by her supervisors. The claimant was written up in 2020 for working overtime without permission. The claimant protested the write-up and it was removed from her file. The claimant was given a case and then immediately asked why her work on the case was late and she was written up. When she worked in the office, the claimant felt her supervisor monitored her breaks, how many times she went to the bathroom and frequently asked where the claimant was going. The employer had no complaints about the claimant’s work performance, either in the office or teleworking.

The claimant was out on maternity leave from February 1, 2021 to June 1, 2021. The claimant applied for short term disability and her supervisor told the insurance company there was no reason for the claimant to be out longer than six weeks, requiring the claimant to provide medical documentation to have further leave approved. While she was out on leave, the claimant received calls from co-workers who told her that supervisors were openly talking in the office about getting the claimant fired as soon as she returned from her leave. The claimant decided she could not return to work to be harassed or bullied because it caused her depression, physical issues and family issues.

The claimant did not bring her concerns about the phone calls to the employer because the present office manager was leaving. The claimant talked about her concerns with her union representative, who urged her to file a grievance. The claimant did not file a grievance because she did not think it would go anywhere. The claimant returned from her maternity leave early on May 28, 2021 and gave the employer two weeks notice. She knew the office was behind on work and she wanted to leave on good terms. The claimant’s supervisor told the claimant she would have to return to the office to work out her notice period. The claimant contacted her union representative who contacted the employer and the claimant was permitted to telework for the final two weeks.

#### 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

The claimant in this case decided to voluntarily quit work because she felt harassed and bullied by supervisor’s at 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, Com. 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, Com. Dec. 9427588, July 29, 1994, affirmed in Kalen-Brown, Com. 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 resigned because she was told that supervisors were talking about getting her fired. The claimant did not bring the concerns to the employer. That the office manager was leaving does not mean this was not a reasonable alternative, as the agency has multiple level of management and human resources staff. The claimant was advised by her union representative to file a grievance, but she decided not to because she did not think it would go anywhere. However, the claimant’s union intervention had previously resulted in a write-up being removed from her file and her being allowed her to work from home her last two weeks. The claimant’s belief that the grievance process would not work does not mean it was not a reasonable alternative to quitting.

In applying the above cited decisions of the Commissioner and Courts to the claimant’s circumstances, the Tribunal finds the claimant failed to pursue reasonable alternatives to quitting and therefore did not establish good cause for voluntarily leaving work. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on August 17, 2021 is **AFFIRMED.** 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 25, 2022.

Rhonda Buness, Appeals Officer