

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1712 **Hearing date:** January 31, 2022

**CLAIMANT: EMPLOYER:**

ROBERT MONTAVON FISHHOOK/HALFRACK/TOWNSITE

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Robert Montavon Melissa Heise

#### CASE HISTORY

The claimant timely appealed a July 26, 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 in the fall of 2018. He was hired to work two days a week, but had worked more shifts recently because the employer was short-handed. The claimant last worked on April 2, 2020. At that time, he worked part-time as a cashier in the employer’s liquor store.

On April 3, 2020, the claimant notified his manager that his wife, an emergency room nurse, was sick with symptoms that could indicate the COVID-19 virus. Both the claimant and wife were advised to quarantine until the symptoms were gone. The claimant was tested for the virus on April 6, 2020. On that date the claimant was advised that the manager was training a new employee and the claimant would be returned to two shifts per week when he returned to work.

On April 13, 2020, the claimant let the manager know he had received a negative COVID-19 test and he agreed to return to work. The claimant did not respond on April 15, 2020 when the manager contacted him to confirm that he would work. On April 16, 2020, he advised the manager that his wife had become very sick. On April 23, 2020, the claimant advised the manager that he was sick with symptoms that could indicate the COVID-19 virus. The claimant was advised not to re-test and to quarantine until his symptoms ended.

On April 27, 2020, the employer contacted the claimant to ask if he was quitting because they had received information from the Division that the claimant had established a claim for benefits. The claimant did not respond or contact the employer for a period because his phone was shut off due to lack of payment.

On May 24, 2020, the manager advised the claimant that another employee had quit and she was making a final attempt to have him return to work. On May 27, 2020, the claimant advised the manager that he was still sick and quarantining and that he intended to return to work when he was well. On June 16, 2020 the manager asked the claimant to return his key. The manager had received no medical documentation of the claimant’s illness since April 6, 2020 and no contact from the claimant for some weeks, so she assumed he had abandoned the job. The claimant recalled that he was well at that point and he dropped the key off at the store shortly after the request. The manager held that there was a help-wanted sign in the window at the time the claimant dropped off his key.

#### 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 established a claim for unemployment benefits effective April 12, 2020, while he was off work due to quarantine because of his wife’s illness.

*An individual may have a 'first week' of unemployment when the individual ceases to perform services and again another 'first week' of unemployment when the employer-employee relationship is actually severed. (Alcantara, 83H-UI-087, June 6, 1983)*

The claimant in this case was unemployed when he established his claim because he was quarantining due to his wife’s ongoing illness. Regulation 8 AAC 85.095 hold that a claimant may have good cause to leave work because of an illness that makes it impossible to perform the duties required by the work. The claimant was quarantined and prevented from performing his duties as a cashier. The Tribunal finds the claimant had good cause to leave work at that time and no penalties are appropriate.

The claimant had a second separation from employment when he did not return to work after his illness ended. The claimant held that he thought he was discharged because the employer told him it was her final attempt to get him back to work on May 24, 2020, when he was still sick. The Tribunal does not agree. The claimant advised the manager on May 27, 2020 after her “final attempt” message that he intended to return when he was well. He then made no attempt to return to work although he was well enough to return his key shortly after requested to do so on June 16, 2020.

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 claimant in this case had the choice to remain employed but he did not contact the employer when he was well. The claimant voluntarily quit suitable work when he failed to return after being off work for quarantine and illness and instead dropped off his key around June 16, 2020 and did not inquire about returning to work. The claimant did not establish that he failed to return to work for one of the reason listed in regulation 8 AAC 85.095(c).

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 in this case did not establish that he had a compelling reason to voluntarily leave suitable work and he did not exhaust the reasonable alternative of contacting the employer after he was well to attempt to return to work.

The Tribunal finds the claimant voluntarily quit suitable work without good cause. The disqualification period will be adjusted to reflect the claimant quit in the week ending June 19, 2020.

#### DECISION

The determination issued on July 26, 2021 is **AFFIRMED** and **MODIFIED.** Benefits are **DENIED** for the weeks ending June 20, 2020 through July 25, 2020. 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 7, 2022.

Rhonda Buness, Appeals Officer