

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1763 **Hearing date:** February 16, 2022

**CLAIMANT: EMPLOYER:**

MICHAEL VEGA SOUTHEAST ALASKA REGIONAL

HEALTH CONSORTUIM

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Michael Vega None

#### CASE HISTORY

The claimant timely appealed an August 31, 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 in July 2020. He last worked on June 18, 2021. At that time, he worked full time as a patient experience representative.

May 24, 2021, the employer announced that it would require all workers to be vaccinated against the COVID-19 virus. The employer required all workers to have a first dose of the vaccine by June 30, 2021. The employer’s policy stated that an employee’s failure to be vaccinated would result in discipline up to and including termination. The claimant made a personal choice not to be vaccinated.

The claimant advised the employer on May 28, 2021 that he would voluntarily quit effective June 18, 2021. The claimant chose his last day based on the availability of a ferry off the island one week after that date.

#### 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 voluntarily quit suitable work on June 18, 2021 because he believed he would be terminated for not getting a COVID-19 vaccine by June 30, 2021.

*Leaving in anticipation of a discharge is a voluntary leaving, not a discharge. This is true no matter how well founded the worker's belief was that the employer would discharge the worker if the worker did not leave. West, Com. Dec 9321473, June 15, 1993; [W]e hold that quitting a job in anticipation of discharge is without good cause. Spence, Com. Dec. 9324931, February 9, 1994.*

The claimant in this case quit work before the employer’s deadline to be vaccinated. In applying West and Spence, above, the Tribunal must find the claimant quit without good cause as he quit in anticipation that he would be discharged. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on August 31, 2021 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending June 26, 2021 through July 31, 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 24, 2022.

Rhonda Buness, Appeals Officer