

### APPEAL TRIBUNAL DECISION

**\*\*CORRECTED\*\***

**Docket number:** 21 1919 **Hearing date:** March 29, 2022

**CLAIMANT: EMPLOYER:**

JOHN ALLEN KNIK KOUNTRY LIQUOR INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

John Allen DeeAnne Breuer

#### CASE HISTORY

The employer timely appealed a September 20, 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 his most recent period of work for the employer on January 7, 2019. He last worked on August 11, 2021. At that time, he worked full-time as a store manager.

On the claimant’s last day of work, the owner called the store to speak to the claimant and was advised that the claimant had left the store to pick up an employee for their shift. When the claimant returned to the store and spoke to the owner, the owner yelled and chastised the claimant because the claimant had left the store without a manager when he was supposed to be onsite.

The claimant was very stressed because his mother was ill and in an out-of-state hospital with a very poor prognosis. On August 6, 2021, the claimant talked to the general manager about his mother’s hospitalization. The manager asked if the claimant intended to travel to see his mother and the claimant said he did not intend to at that time. The claimant’s mother died a short time later and the claimant knew he did not have paid leave time available to attend his mother’s funeral. The claimant had recently missed work due to required COVID-19 quarantines and some traumatic life events. The claimant had used all of his paid leave time for the previous periods he was required to be off work, including quarantine periods. The claimant requested the employer seek federal funds available to pay workers for quarantine periods so his leave could be returned to him, but the claimant had not yet learned if that would happen. After the death of a baby, the claimant inquired with the employer about FMLA leave availability, but he did not get a response to his inquiry and did not follow up with the employer. The claimant felt pressured by the employer to return to work after two days off following the baby’s death.

The claimant did not recall if he requested time off to go see his mother, but the employer had no record that the claimant made such a request and the general manager did not know the claimant’s mother had died.

The claimant was unhappy about what he perceived the be the employer’s lack of response to his personal stresses and he was frustrated by the owner’s yelling on the phone that day about the claimant leaving the store during his shift. The claimant decided to quit effective immediately. On August 11, 2021, the owner received a faxed message from the store that stated the claimant was unhappy and was resigning effective immediately. The claimant left his keys at the store and left.

#### 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 was under personal stress and voluntarily quit work after being yelled at by the business owner for leaving the store during his shift.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. The claimant in this matter did not leave work for one of the allowable reasons. The regulation also directs the Department to consider the suitability of the work as laid out in AS 23.20.385(b). The claimant did not establish that the work was a risk to his health, safety or morals, or that he was not physically fit for the work. This leaves the Tribunal to consider other factors that would influence a reasonably prudent person in the claimant’s circumstances.

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 was stressed by recent traumatic events and his mother’s illness and death at the time he left the work. It is understandable that the claimant was additionally stressed by being chastised by the owner. However, the claimant has not established that he was treated in such a way that would establish an ongoing pattern of hostility, abuse or unreasonable discrimination which would justify quitting due to working conditions (Griffith, Com. Dec. 8822158, December 20, 1988, *aff'd* Griffith v. State Department of Labor, Alaska Superior Court, No. 4FA-89-0120 Civil, September 25, 1989).The claimant did not recall if asked for a leave of absence to attend his mother’s funeral and the employer had no record that he had made a request or that he ever notified the employer of his mother’s death. The claimant has not established that he had a compelling reason to leave the work or that he exhausted reasonable alternatives to quitting the work.

The Tribunal cannot conclude that the claimant had good cause to voluntarily quit work at the time he did. The penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on September 16, 2021 is **REVERSED.** Benefits are **DENIED** for the weeks ending August 14, 2021 through September 18, 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 April 22, 2022.

Rhonda Buness, Appeals Officer