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### APPEAL TRIBUNAL DECISION

**Docket number:** 21 1992 **Hearing date:** May 12, 2022

**CLAIMANT: EMPLOYER:**

HOLLY FIELDS HOTEL NORTH POLE LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Holly Fields Wanda Adlesperger

#### CASE HISTORY

The claimant timely appealed a September 30, 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 on March 25, 2021. She last worked on April 17, 2021. At that time, she worked part-time as a room attendant.

On April 16, 2021, the claimant’s supervisor asked if the claimant could come in for a couple hours on her day off. The claimant agreed to come in to work for a short period. The claimant was scheduled work at 9:00 am. On her last day, the claimant came in at 7:00 am to get an early start and started doing cleaning tasks quietly without using the vacuum cleaner. The claimant felt ill because she had not been able to sleep the night before and told her supervisor that she was leaving at 9:00 am. The supervisor told the claimant she could not leave until the work was done. The claimant replied she had only agreed to work for a couple of hours and she was leaving.

The supervisor reported to the general manger that the supervisor had expected that the claimant would work the entire shift and that the claimant had an aggressive attitude and stated that she could decide when she was leaving. The claimant had previously been warned when she started work before her scheduled shift. The manager decided to discharge the claimant because she had once again started work early, as well as left work before the shift was complete and had an aggressive attitude with her supervisor. The claimant was advised by text message not to return to work.

#### 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 first issue before the Tribunal is whether the claimant voluntarily quit suitable work or was discharged.

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 Division determined the claimant had voluntarily quit work, however although the claimant left before completing a full shift, it was the employer that took the action that ended the employment relationship when the manager told the claimant not to return to work. The separation is a discharge and the Tribunal will consider if the discharge was for misconduct.

The claimant agreed to work on her day off. The claimant had been told previously not to start work early because the employer was concerned cleaning noise would wake guests too early. The claimant started work two hours before the employer scheduled room cleaning to start, and did not ask if she could start early and not make noise.

In Vaara, Com. Dec. 85H-UI-184, September 9, 1985, the Commissioner held:

*The employer does have the right to set the parameters of the work. Furthermore, insubordination—that is, refusal to obey a reasonable request of the employer—does constitute misconduct. On the other hand, if just cause can be shown for refusing the request, then misconduct may be converted to a nondisqualifying separation.*

The claimant did not establish that following the employer’s instruction to start work at 9:00 am was unreasonable or that she had cause to disobey the employers instruction. While the claimant’s leaving after two hours can be excused, as she had only agreed to work for a short time, the claimant’s actions in starting work early after being warned not to is a willful disregard of the employer’s interests.

The Tribunal finds the claimant was discharged for misconduct connected with her work and the penalties of AS 23.20.379 are appropriate.

#### DECISION

The determination issued on September 30, 2021 is **MODIFIED** and **AFFIRMED.** Benefits remain **DENIED** under AS 23.20.379(a)(2) for the weeks ending

May 1, 2021 through June 5, 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 May 27, 2022.

 Rhonda Buness, Appeals Officer