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### APPEAL TRIBUNAL DECISION

**Docket number:** 21 2086 **Hearing date:** May 25, 2022

**CLAIMANT: EMPLOYER:**

HEATHER JAMES JUNEAU HOSPITALITY LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Heather James None

#### CASE HISTORY

The claimant timely appealed determinations issued on October 21, 2021 and October 22, 2021 which denied benefits under Alaska Statute 23.20.379 and 23.20.406-409. The issue before the Appeal Tribunal is whether the claimant voluntarily quit suitable work without good cause and whether the claimant is eligible for extended benefits.

#### FINDINGS OF FACT

The claimant began work for the employer in March 2021. She last worked on May 10, 2021. At that time, she worked full time as a housekeeper.

The claimant was concerned because her elderly grandmother with dementia was taking walks and frequently getting lost. The claimant frequently had to leave work to go look for her grandmother. The claimant’s grandmother was missing all day on April 16, 2021 before the claimant found her. The claimant decided to quit work to stay home and take care of her grandmother and keep her from going missing.

The claimant was expecting a baby and she had decided to be a stay-at-home mother and not look for further 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:**

1. A disqualification under AS 23.20.379 (a) and (b) remains in effect for six consecutive weeks or until terminated under the conditions of AS 23.20.379 (d), whichever is less. The disqualification will be terminated immediately following the end of the week in which a claimant has earned, for all employment during the disqualification period, at least eight times his weekly benefit amount, excluding any allowance for dependents. The termination of the disqualification period will not restore benefits denied for weeks ending before the termination. The termination does not restore a reduction in maximum potential benefits made under AS 23.20.379 (c).

(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.

#### AS 23.20.406 provides in part:

#### (h) An individual is not eligible to receive extended benefits for any week of unemployment in the individual's eligibility period if the individual has been disqualified for benefits because the individual voluntarily left work, was discharged for misconduct, or refused an offer of suitable work, unless the disqualification imposed for those reasons has been terminated in accordance with AS 23.20.379(d).

#### CONCLUSION

Alaska Statute 23.20.379 requires the Division to examine the reason a claimant is unemployed when a claim for benefits is established and determine if penalties should be applied. Regulation 8 AAC 85.095(c)(2) holds a claimant may have good cause to voluntarily leave work to provide care for an immediate family member who has a disability or illness.

The claimant in this case voluntarily quit work to provide care for her elderly grandmother with dementia. Regulation 8 AAC 85.095(g)(4) holds that for the purposes of this section, immediate family member means a person who is related to the claimant by blood, marriage or adoption as a parent, spouse, brother, sister, grandparent or grandchild.

*Neither the Appeal Tribunal nor I have any jurisdiction to hold contrary to the clear wordage of the law. Scott, Com. Dec. 87H-EB-162, June 18, 1987.*

The claimant in this case voluntarily quit work to provide care for an immediate family member with an illness or disability. The Tribunal finds the claimant had good cause to leave work at the time she did. The penalties of AS 23.20.379 are not appropriate.

Since the claimant is not disqualified under AS 23.20.379, her eligibility eligible for extended benefits under AS 23.20.406 is not at issue.

The claimant stated in the hearing that she was not available for work after leaving employment on May 10, 2021 because, in addition to caring for her grandmother, she was about to have a baby and she had decided to stay at home and not look for further work. The matter of the claimant’s availability for work is not before the Tribunal and it does not appear that the Division has issued any determinations regarding the claimants availability for work during that period, so that issue will be remanded to the Division for fact finding and possible determination.

#### DECISION

The determination issued on October 21. 2021 is **REVERSED.** Benefits are **ALLOWED** for the weeks ending May 15, 2021 through June 19, 2021, if otherwise eligible. The three weeks are restored to the claimant’s maximum benefits. The determination will not interfere with the claimant’s eligibility for extended benefits under AS 23.20.406-409.

The determination issued on October 22, 2021 is **REVERSED.** The claimant’s eligibility for extended benefits under AS 23.20.406-409 is restored.

The issue of the claimant’s availability for work following her separation from employment is **REMANDED** to the Division for fact finding and determination if warranted.

#### 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 June 3, 2022.

Rhonda Buness, Appeals Officer