

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 2091 **Hearing date:** May 17, 2022

**CLAIMANT: EMPLOYER:**

ORELVIS IBARRA ANCHORAGE SCHOOL DIST

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Orelvis Ibarra Angela Grant

####  CASE HISTORY

The claimant filed an appeal against two determinations. First is an October 8, 2021 determination that denied benefits under AS 23.20.379 on the ground that the claimant voluntarily left suitable work without good cause or was discharged for work-related misconduct.

The second determination was issued on October 8, 2021, and denied the claimant’s benefits under AS 23.20.406(h), on the ground that the claimant was not eligible for extended benefits.

**FINDINGS OF FACT**

The claimant began training to become a substitute bus driver for the school district. She completed four days of training, ending July 15, 2021. After the initial four days of training, the claimant was required to obtain a school bus driver permit through the Alaska Motor Vehicle Department by passing a commercial driver’s license test. The claimant was not able to receive a passing grade on the test after multiple attempts.

The claimant advised the Transportation Department personnel that she had not passed the required test to get a permit to continue her training. She began to pursue other positions with the school district. She began work as a substitute teacher in September.

#### PROVISIONS OF LAW

#### AS 23.20.379 provides in part:

1. 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; or

 (2) was discharged for misconduct connected with the insured worker's last work.

1. The disqualification required in (a) and (b) of this section is terminated if the insured worker returns to employment and earns at least eight times the insured worker's weekly benefit amount.

#### 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).

**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 the benefits denied for the weeks ending before the termination. The termination does not restore a reductions 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).

#### CONCLUSION

The claimant did not quit the employment but was not able to continue the training due to her inability to pass the required test for a bus permit under the State’s Commercial Driving License requirements.

The claimant’s failure to meet the requirements has not been shown to be misconduct. Therefore, the penalties associated with AS 23.20.379 are not appropriate.

The claimant is not required to purge a penalty imposed under AS 23.20.379(a) by returning to work during the disqualification period and earning eight times the weekly benefit amount. The claimant is eligible for extended benefits under AS 23.20.406.

#### DECISION

The determinations issued on October 8, 2021 are **REVERSED**. Benefits are allowed for the weeks ending August 21, 2021 through September 25, 2021. The three weeks are restored to the claimant’s maximum benefits. The claimant is eligible for extended benefits under AS 23.20.406-409.

#### APPEAL RIGHTS

This decision is final unless an appeal is filed 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 appeal rights and procedures is enclosed.

Dated and mailed on May 18, 2022.

 Tom Mize

 Appeals Officer