

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL FROM THE DEPARTMENT OF LABOR AND WORKFORCE
DEVELOPMENT**

In the Matter of)
)
JONATHON R. PIFER) OAH No. 21-2211-LUI
) Agency No. 21 0936 03 10
_____)

APPEAL DECISION (SEPARATION)

Docket Number: 21 0936 03 10

Hearing Date: November 22, 2021

CLAIMANT APPEARANCES:

EMPLOYER APPEARANCES:

Jonathon Pifer
Steve Pifer

None

CASE HISTORY

The claimant, Jonathon Pifer, mailed in an appeal after a pair of March 23, 2021 determinations was issued, one of them granting eligibility on the basis of voluntary separation for good cause and the other one denying benefits from a later date on the basis that Mr. Pifer voluntarily quit his employment. Notice of the decisions was mailed on 24, 2021.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in October of 2021. Under the agreed terms of referral, an administrative law judge hears and decides the appeal under procedures specific to UI appeals. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on November 22, 2021. Mr. Pifer participated, but argument and testimony was provided by his father, Steve Pifer, who has personal knowledge of all relevant facts and holds a power of attorney for him. No other parties appeared. The issue presented at hearing was whether Mr. Pifer's appeal was timely and, if so, whether he at any point voluntarily quit his employment without good cause.

TIMELINESS

Jonathon Pifer's appeal was flagged as untimely. This occurred because Alaska Regulation 8 AAC 85.151 provides a 30-day window for appeal, and Mr. Pifer's appeal was not logged by the Division of Employment and Training Services (DETS) until approximately 50 days after the notices of the two DETS decisions were mailed out.

However, Mr. Pifer has proof that he mailed in his appeal letter on April 3, 2021, only ten days after the decisions were noticed and well within the 30-day deadline. The reason the appeal was logged late was that Mr. Pifer's initial appeal request seems to have been misplaced, and the appeal was mistakenly logged in on the date Mr. Pifer contacted DETS to inquire about his appeal's status rather than on the date he first sent it in.

Mr. Pifer appealed timely.

FINDINGS OF FACT

Jonathon Pifer is a 28-year-old man with aftereffects of fetal alcohol syndrome (FAS). He has worked for Target Corporation for eight years, and he still works there.

One of the effects of Mr. Pifer's FAS has been compromised lungs. Because of this, he is at high risk for severe COVID-19.

In the early days of the pandemic, Mr. Pifer took a leave of absence for a time, but he returned to work during the summer and fall of 2020. In early November of 2020, Alaska was experiencing a pronounced spike in COVID-19 cases. Mr. Pifer and his employer agreed that he should go on another leave of absence until it was safe for him to work. His leave of absence began on November 15, 2020. It is entirely undisputed that Mr. Pifer had good cause for taking this leave of absence; DETS has so determined in the first of its two decisions made on March 23, 2021, and the employer (which had concurred in granting the leave) has indicated no quarrel with the good cause determination.

The leave of absence began as vaccines were nearing approval but were not yet available. With consultation and concurrence of Target, the leave continued until Mr. Pifer could get vaccinated and the vaccination could become effective. He received the second of his two shots on February 20, 2021. He received medical advice that the shot would be 90% effective after two weeks, or on March 6, 2021. He so advised his employer, and was placed back on the schedule beginning March 7, 2021.

In the second of its two March 23, 2021 decisions, DETS determined that Mr. Pifer left his job at Target without good cause on February 8, 2021. Mr. Pifer did not leave his job at all, and he did not commence a leave of absence on February 8. As of February 8, he was in the middle of a two-shot vaccine course aimed at returning him to work as expressly agreed with his employer.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

AS 23.20.379(a) - Voluntary Quit, Discharge For Misconduct, and Refusal of Work

- (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.

BENEFIT POLICY MANUAL - Voluntary Leave (May 2003)

440-1 SEPARATION DATE

B. Point of Separation

A voluntary leaving occurs whenever:

The worker voluntarily ceases performing services for the employer

8 AAC 85.095 - Voluntary Quit, Discharge for Misconduct, and Refusal to Work

- (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;

APPLICATION

This case results from a simple factual misunderstanding. Based on a misreading of an ambiguous communication from a Target representative, DETS believed Mr. Pifer went on a justifiable leave of absence on November

15, 2020—but then went on to leave his job entirely on February 8, 2021.

This is not what happened. There was just one leave of absence and, as DETS correctly determined in the first of its two decisions, it was a leave of absence taken for good cause. The leave continued until the basis for it—waiting until work could be made safe for someone with Mr. Pifer’s lung condition—was completed. It happened exactly as agreed with the employer.

I concur with DETS that the leave that commenced on November 15, 2020 was an unpaid leave taken for good cause under 8 AAC 85.095(c)(1). The leave remained a leave for good cause until it ended, as agreed, on March 7, 2021.

DECISION

The appeal is **TIMELY**. As to the issue of separation, the Division’s first March 23, 2021 decision, finding separation for good cause as of November 15, 2020, is **AFFIRMED**. The Division’s second March 23, 2021 decision, finding that Mr. Pifer voluntarily left work without good cause on February 8, 2021, is **REVERSED** in its entirety. The Division shall recalculate benefits accordingly. Jurisdiction is not retained. If Mr. Pifer disagrees with the revised benefits calculation, he will have new appeal rights.

DATED November 29, 2021.



Christopher Kennedy
Administrative Law Judge

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.

CERTIFICATE OF SERVICE

I certify that on November 29, 2021, this document was sent to: Steve Pifer, POA (by mail and email); Target Corporation (by mail); DETS UI Technical Team & Appeals Team (by email).



Office of Administrative Hearings