

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

In the Matter of)
)
JACCIE MCANULTY) OAH No. 21-2208-LUI
) Agency No. 21 0956 10

APPEAL DECISION (SEPARATION)

Docket Number: 21 0956 10

Hearing Date: November 22, 2021

CLAIMANT APPEARANCES:

Jaccie McAnulty
Brandon Moen

EMPLOYER APPEARANCES:

Tammy Wanner
Kyle Lavey

CASE HISTORY

The claimant, Jaccie McAnulty, timely appealed a May 10, 2021 determination denying benefits under AS 23.20.379 and concluding that she voluntarily quit her employment with Plaza Inn Hotels, Inc. Notice of the decision was mailed on May 11, 2021, and Ms. McAnulty appealed two days later.

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. Ms. McAnulty and her husband provided testimony under oath. Her former employer, Plaza Inn Hotels, also participated and offered sworn testimony from two of its employees. The issue presented at hearing was whether Ms. McAnulty voluntarily quit her employment with Plaza Inn Hotels without good cause.

FINDINGS OF FACT

Ms. McAnulty sought UI benefits following the cessation of her employment with Plaza Inn Hotels. She worked there as a housekeeper.

Plaza Inn Hotels offered Ms. McAnulty the job on November 23, 2020. At the time, Plaza Inn had recently become a COVID-19 quarantine facility. Ms. McAnulty was to be a backup housekeeper, to be called in when turnover was heavy. She was not required to disinfect rooms that had been occupied by quarantined individuals, but after disinfection she was required to make up those rooms for the next occupant.

The job came to Ms. McAnulty's attention through a job listing on Indeed. Sometime in October or November, Plaza Inn Hotels added language to its housekeeper listing specifying that the job was in a quarantine facility. However, it is more likely than

not that when Ms. McNulty saw the listing, that language had not yet been added. The quarantine role may have been discussed in an interview before the hire, but this, again, has not been established.

Ms. McNulty worked one full shift at the hotel on November 27, 2020. She learned of the hotel's function on that day, if she had not learned it before. She did not quit the job at that time. She continued to correspond with the hotel about additional shifts and about completing her hiring paperwork for the next week. On December 9, she agreed to take a shift on December 10, but then did not show up for it. The hotel then took her off its schedule. On December 12, she sent a text saying that the job listing had not mentioned the quarantine facility role and, at \$12 an hour, the Covid risk involved in the job was not worth it to her.

Ms. McNulty recalls getting symptoms of COVID-19 sometime in the late fall of 2020, but the evidence indicates that she did not get it prior to December 12. She did have another, unspecified health issue in late November.

Ms. McNulty has described no shortfalls in worker safety protocols at Plaza Inn.

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;
 - (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) - Suitable Work

- (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.

APPLICATION

Ms. McAnulty's departure from Plaza Inn Hotels can be viewed in two ways. One way is as a termination for misconduct, because the employee failed to show up for an agreed shift. Viewed in that way, the documentary evidence and testimony establish clearly that Ms. McAnulty did agree to take a shift and did fail to appear for it without a medical excuse or other circumstance beyond her control. Thus, the termination was for demonstrated misconduct and Ms. McAnulty is subject to the disqualification under AS 23.20.379(a)(2).


The other way to view this departure is as a voluntary quit by walking off the job. Ms. McAnulty attributes her decision to do this to the lack of disclosure of the hotel's quarantine facility role. However, after Ms. McAnulty indisputably learned of that role, she continued to follow through on her hire and agree to take shifts in the future for two more weeks. It was only on December 12, more than two weeks after she had worked a shift at the hotel, that she first mentioned her displeasure that the job listing had not mentioned the quarantine facility aspect of the job. Under these circumstances, one cannot find that the nondisclosure was actually the cause of her decision to leave.

As a voluntary quit, the decision to leave the job does not fit any of the criteria in 8 AAC 85.095(c), quoted above. Notably, no unacceptable safety or working conditions have been established. I certainly understand that the pay for this job may have been inadequate, in light of the specialized role of the hotel—just as Ms. McAnulty pointed out in her final communication to the hotel. Many workers would, like Ms. McAnulty, choose to stay away from such a job. However, the unemployment laws do not create a good cause category for such a decision.

DECISION

As to the issue of separation, the Division's May 11, 2021, notice of determination is **AFFIRMED**.

DATED November 26, 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 26, 2021, this document was sent to: Jaccie McNulty (by email); Tammy Wanner (by email); DETS UI Appeals Team (by email).

Office of Administrative Hearings