

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

In the Matter of)
)
BRENDA ALMENAS) OAH No. 21-2209-LUI
) Agency No. 21 1063 10

APPEAL DECISION (SEPARATION)

Docket Number: 21 1063 10

Hearing Date: November 22, 2021

CLAIMANT APPEARANCES:

Brenda Almenas

EMPLOYER APPEARANCES:

Joyce Lund
Karen Smith
John Harmon

CASE HISTORY

Brenda Almenas timely appealed an April 20, 2021 determination of the Division of Employment and Training Services. The determination found that she lacked good cause for voluntary quitting her employment with Our Lady of the Valley Catholic School in January 2021. Based on that finding, the determination imposed a disqualification under AS 23.20.379(a)(1). Notice of the decision was mailed on April 21, 2021, and Ms. Almenas appealed three weeks 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. Almenas testified under oath. Her former employer also participated and offered sworn testimony from Principal Joyce Lund and Administrative Assistant Karen Smith. John Harmon, Superintendent of Schools for the Archdiocese of Anchorage, provided background information about hiring and grievance processes.

The issue presented at hearing was whether Ms. Almenas voluntary quit her job at Our Lady of the Valley without good cause sufficient to avoid a period of ineligibility for unemployment benefits.

FINDINGS OF FACT

This case involves the resignation of a longtime and seemingly beloved employee of the Catholic elementary school in Wasilla. A deep-seated policy disagreement surrounds the departure. This decision will not explore the disagreement in detail nor try to identify which side's point of view is correct. The findings of fact will be limited to a much smaller subset of facts that have a bearing on legal eligibility for unemployment benefits. The findings are based on a balanced interpretation of the testimony at hearing, unless otherwise attributed.

Brenda Almenas worked for Our Lady of the Valley Catholic School for about five years. When the pandemic arrived toward the end of the 2019-2020 academic year, she was teaching at the grade 3-4 level. She proved to be highly adept at setting up video learning, a skill that was very valuable to the school.

Approaching the 2020-2021 school year, the school developed a new position involving technical/online coordination coupled with teaching certain classes in Religion and Latin. Ms. Almenas signed a contract to fill the new position. She would have preferred to teach a 7/8 or 3/4 class, and was somewhat unhappy with the new assignment. She perceives that her preferences were not sufficiently respected and that she was channeled into the new role. Regardless of whether this is so, she agreed to take the new position and performed it well during the fall semester.

Shortly after the Christmas holiday a policy disagreement developed. The principal and the 7/8 teacher believed Ms. Almenas's time with the students teaching Religion and Latin needed to be reduced in order to emphasize core subjects for a time. Ms. Almenas thought this was very unwise. While the proposal would not have reduced Ms. Almenas's hours or pay, it affected educational matters about which she cared deeply. Believing the change was being forced upon her and that her views were not being respected, she abruptly left the campus on January 8, 2021 and submitted a letter of resignation the next business day.¹ The resignation was effective four days thereafter.²

Ms. Almenas was employed under a contract that referenced a written grievance procedure. All teachers have a copy of the procedure, and it has been used to address work disagreements at the school in the relatively recent past. Ms. Almenas was not aware of it and did not use it. She did raise her concerns orally to the principal, but did not follow up on an invitation from the principal to discuss the matter further. On both sides, considerable frustration surrounded her departure.

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....

1 This finding is based partly on Ex. 1, p. 9.

2 Ex. 1, p. 12.

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).

* * *

- (g) (3) "disability or illness" means a disability that necessitates care for the disabled or ill person for a period of time longer than the employer is willing to grant leave, paid or otherwise;

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

Putting aside training opportunities, better jobs, or harassment, in general an employee has “good cause” to leave a job voluntarily only if the circumstances leave the employee *no reasonable option* but to leave. This requirement is written directly into 8 AAC 85.085(c)(1) and (3), relating to a claimant’s own disability or to working conditions. Ms. Almenas’s claim for good cause grows out of one of these provisions, 8 AAC 85.085(c)(3), and is premised on unacceptable working conditions.

Ms. Almenas had a serious and heartfelt disagreement with the decision by the school administration to cut back on the students’ time in Religion and Latin. She also perceived—and no finding will be made that she was incorrect—that her point of view was not given sufficient respect.

A difficulty with Ms. Almenas’s unemployment claim is that she did not seek to work these problems out through the formal grievance procedure before walking away from the job. That procedure was one she had opted into by signing her employment contract. One therefore cannot find that she had exhausted her avenues for getting her point of view heard and addressed.

More fundamentally, the deep and heartfelt disagreement Ms. Almenas had with her employer was not one relating to her hours, her working location, her safety, anything of that nature. It was a disagreement about educational policy. It may well have been the sort of disagreement that would justify an employee in looking for other jobs and preparing to leave for alternative employment. But what Ms. Almenas asks the tribunal to do is to go well beyond that, and say that it was so intolerable that she had no reasonable option but to leave immediately. She asks that unemployment insurance compensate her for exercising the option to walk out with no other position lined up.

This she cannot have. Unemployment Insurance is not happiness insurance, and unhappiness in a position does not equate to having no choice but to leave it. To preserve full eligibility to draw unemployment insurance benefits, an employee who disagrees with an employer’s policies toward its customers or students might have to endure the disagreeable work situation for a time until he or she can transition to work elsewhere.

I make no finding that Ms. Almenas acted wrongfully. But in choosing to leave abruptly based on an educational policy issue, she did impair her eligibility for unemployment benefits.

DECISION

The claimant's appeal is not sustained. The Division's April 20, 2021 decision is **AFFIRMED**.

DATED December 7, 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 December 8, 2021, this document was sent to: Brenda Almenas (by mail); Karen Smith, representative for Our Lady of the Valley Catholic School (by mail and email); DETS UI Appeals Team (by email); DETS UI Technical Team (by email).

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Office of Administrative Hearings