

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

In the Matter of )  
 )  
ROBERT CAMPBELL ) OAH No. 21-2336-LUI  
 ) Agency No. 21 1169 16

**APPEAL DECISION**

**Docket Number:** 21 1169 16

**Hearing Date:** January 6, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Robert Campbell

None

**CASE HISTORY**

The claimant, Robert Campbell, timely appealed a June 14, 2021 determination which denied Unemployment Insurance (UI) benefits under AS 23.20.379. The Department of Labor referred the appeal to the Office of Administrative Hearings. Under the agreed terms of referral, an administrative law judge (ALJ) 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 January 6, 2022. Mr. Campbell appeared by telephone as did a representative from Anchorage Plumbing & Heating, the employer.

The issue before the ALJ is the nature of the claimant's separation from work and whether the claimant is disqualified from full unemployment benefits as a result.

**FINDINGS OF FACT**

Robert Campbell established a claim for UI benefits effective February 27, 2021. The Division determined that the claimant was not eligible for UI benefits because he was discharged by his employer for misconduct connected with his work.

Robert Campbell went to work for Anchorage Plumbing & Heating (Anchorage Plumbing) on May 18, 2020. Mr. Campbell was hired as the warehouse supervisor. Anchorage Plumbing has been in operation for more than 30 years. It has a staff of over 17 plumbers, making it among the largest plumbing and heating services in Anchorage.

Well-run warehouse, inventory, and dispatcher services are critical to plumbing and heating operations. In early 2021 Anchorage Plumbing had just moved to a new warehouse. Because the move was the product of sudden change, Mr. Campbell did not have the opportunity to plan and design an inventory schematic before the move. A third-party moving company simply loaded everything in the current warehouse into

boxes and unloaded the boxes in no particular order at the new location. Thus, Mr. Campbell was busy attempting to organize the space while also responding to job requests.

Anchorage Plumbing also decided to change a few product lines, including a filter line, at the time the move occurred. Thus, while organizing the new space, whenever Mr. Campbell came across products that were being discontinued, he would place them to the rear or on the upper shelves of the new space so they could be sent back to the manufacturer.

On February 17, 2021 Mr. Campbell was working in the warehouse. He is the only person who is supposed to fill orders and track inventory at the warehouse. Two other Anchorage Plumbing employees were also on-site, however. Mr. Campbell was busy.

A plumber, Jeremy, came in on his way to a dispatched job. Jeremy decided to fill his own supply order. Mr. Campbell had certain filters being discontinued by Anchorage Plumbing stored at an inconvenient top-shelf location. Jeremy prefers that type of filter. Jeremy went to the shelf, pulled out what he wanted and threw the rest on the floor.

Mr. Campbell told Jeremy to put the filters back before he left. Jeremy refused. He told Mr. Campbell that his time was more valuable than that of a simple warehouse worker and it was Mr. Campbell's job to clean up the mess.

Mr. Campbell called Jeremy an "asshole."

Jeremy challenged Mr. Campbell to take it outside and fight.

Mr. Campbell called for a supervisor to come see the mess and observe Jeremy's demeanor. Before the supervisor could arrive, Jeremy escalated and made additional challenges and threats to Mr. Campbell. The two other Anchorage Plumbing employees were present.

Mr. Campbell also lost his temper. He told Jeremy that he did not plan to go outside and fight, but if Jeremy forced him into it and they went outside Mr. Campbell was going to pick up a nearby club or get his gun and end it that way. At the hearing Mr. Campbell testified he made that statement to deter Jeremy or de-escalate the situation: that it should have demonstrated to Jeremy how stupid it was for two grown men to hurt each other over the situation.

According to witnesses at the hearing, when Mr. Campbell said he was going to take the club or get his gun, "Jeremy got superheated...took off his jacket...and the other guys corralled him and took him outside."

The supervisor arrived on scene. The supervisor heard from Jeremy, Mr. Campbell, and two witnesses (Raynie and Jake) about what happened. Mr. Campbell is a vocal second amendment right supporter, open carry advocate, and is known to bring a

firearm to work. Sometimes he keeps it in his backpack. It was in his truck in the parking lot at the time of this event.

Jeremy apologized to the supervisor on scene. He offered to apologize to Mr. Campbell, but the supervisor thought it would be better to let the situation cool off a bit before that happened.

The supervisor consulted the owner of the company that afternoon.

Mr. Campbell was terminated from employment that evening.

Jeremy remained employed with a warning about his conduct. Jeremy has not had further outbursts.

Mr. Campbell filed a claim for unemployment. The Division denied his claim after determining that he was discharged for misconduct associated with his work.

### **THE UNEMPLOYMENT INSURANCE BENEFITS ELIGIBILITY FRAMEWORK.**

An individual is eligible for unemployment compensation under Alaska labor law if the individual's employment is covered by the Alaska Employment Security Act EASA, AS 23.20.005-535 as implemented in 8 AAC 85.010-842 and detailed in the Department's Benefit Policy Manual (BPM).<sup>1</sup> Under those rules the employment and training services division of the Department of Labor and Workforce Development conducts a two-part analysis of each claim filed by an unemployed worker. The first step in the analysis is the "non-monetary determination" of whether the claimant is eligible to for benefits.<sup>2</sup> If the claimant is eligible, the division conducts the second step and issues a "monetary determination" calculating the benefit amount payable to the claimant.<sup>3</sup>

Eligibility turns on the facts and circumstances surrounding the claimant's separation from employment. The separation may be due to "discharge" where the employer takes action which results in the separation and the worker does not have a choice in remaining in employment.<sup>4</sup> A claimant who has been involuntarily discharged by their employer is eligible for full unemployment

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<sup>1</sup> The BPM fulfills the mandate in 8 AAC 85.360 that the Department "maintain a policy manual interpreting the provisions of AS 23.20 and this chapter." The Alaska supreme court has referred to the BPM as the "Precedent Manual" and looks to the BPM to interpret labor issues. *See, Calvert, supra; Westcott v. State, Dep't of Labor*, 996 P.2d 723 (Alaska 2000). The BPM is divided into eight sections: Able and Available, Evidence, Labor Dispute, Miscellaneous Misconduct, Suitable Work, Total and Partial Unemployment, and Voluntary Leaving with individual subsections addressing specific issues and incorporating recent updates.

<sup>2</sup> 8 AAC 85.010(a)(14); 8 AAC 85.085.

<sup>3</sup> 8 AAC 85.010(a)(12).

<sup>4</sup> 8 AAC 85.010(a)(20).

benefits unless the discharge was for misconduct connected with work as defined in AS 23.20.379(a)(2) and 8 AAC 85.095(d).

“Misconduct connected with work” means discharge for:

- (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; or
- (2) a claimant's conduct off the job, if the conduct shows a willful and wanton disregard of the employer's interest; and either (i) has a direct and adverse impact on the employer's interest; or(ii) makes the claimant unfit to perform an essential task of the job; or
- (3) discharge for an act that constitutes commission of a felony or theft under circumstances defined in 8 AAC 85.095(f).

If the claimant was discharged for misconduct connected with work, the claimant is not eligible for full employment benefits. Instead, the claimant is disqualified under AS 23. 20.379(a) and (b)-- meaning the claimant is disqualified from benefits the first and following five weeks of unemployment and the maximum potential benefit is reduced by three times the weekly benefit amount. However, “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.”<sup>5</sup> Claimants discharged for those reasons remain eligible for full unemployment benefits.

The work separation may also be due to voluntary decisions or “job quits” by the employee. When the separation is due to a voluntary job quit by the employee, the employee will be disqualified per AS 23. 20.379(a) and (b) unless the employee can demonstrate that the job quit was for “good cause.”

To determine whether good cause existed for voluntarily leaving suitable work, the factors set out in 8 AAC 85.095(c) are considered:

- (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;

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<sup>5</sup> 8 AAC 85.0895(d)(1).

(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 individual 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 bona fide offer of work that offers better wages, benefits, hours, or other working conditions; if the new work does not materialize, the reason for the work not materializing must not be due to the fault of the worker; and

(8) other factors listed in AS 23.20.385(b).<sup>6</sup>

AS 23.20.385(b) establishes a catchall provision under which an employee can demonstrate good cause and retain unemployment eligibility by proving the employee had “a compelling reason for leaving work” and “exhausted all reasonable alternatives to quitting.”<sup>7</sup> A compelling reason is “one that causes a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave employment.”<sup>8</sup> Typically, to establish good cause under this standard, an employee must give the employer notice of the problem a chance to adjust or correct it before exhaustion of alternatives can be found.<sup>9</sup> However, the employee is “not expected to do something futile or useless in order to establish good cause for leaving employment.”<sup>10</sup> There is “no requirement that a worker’s reasons for leaving work be connected with the work. Either work connected or personal factors may present sufficiently compelling reasons.”<sup>11</sup>

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<sup>6</sup> 8 AAC 85.095(c).

<sup>7</sup> *Wescott*, 996 P.2d at 726-28 adopting the BPM criteria.

<sup>8</sup> *Calvert v. State, Dept. of Labor & Workforce Development, Employment Sec. Div.*, 251 P.3d 990, 1001 (Alaska 2011)(adopting BPD criteria).

<sup>9</sup> *Id.* at 1002-06.

<sup>10</sup> *Id.* at 1004. (“An employer’s limited authority or expressed refusal to accommodate an employee can establish that requesting an adjustment to work conditions would be futile: ‘[i]f the employer has already made it known that the matter will not be adjusted to the worker’s satisfaction, or if the matter is beyond the power of the employer to adjust, then the worker is not expected to perform a futile act.’ ”)(internal citation omitted).

<sup>11</sup> *Id.* at 1002-06.

AS 23.20.385 provides that suitability of work depends on a wide range of factors, including whether wages, hours, or other conditions of work are substantially less favorable than prevailing conditions in the locality; the degree of risk to the claimant's health, safety, and morals; the claimant's physical fitness for the work; the distance of the work from the claimant's residence and any "other factor that would influence a reasonably prudent person in the claimant's circumstances." Although suitability of work may not be presumed it need not be examined in all cases.<sup>12</sup> Suitability of work must be examined if the worker objects to the appropriateness of wages or other "conditions of work, the worker specifically raises the issue of suitability of work; or facts appear during the investigation that put the Department on notice that wages or other conditions of work maybe substantially less favorable than prevailing conditions for similar work in the locality."<sup>13</sup>

#### **EXCERPTS OF RELEVANT PROVISIONS OF LAW**

##### **AS 23.20.379. 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

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

- (b) An insured worker is disqualified for waiting-week credit or benefits for a week and the next five weeks of unemployment following that week if, for that week, the insured worker fails without good cause

(2) to accept suitable work when offered to the insured worker.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

## APPLICATION

**Mr. Campbell was discharged for misconduct connected with his work: the evidence demonstrated that his conduct at work—threatening to escalate violence with use of a lethal weapon-- showed a willful and wanton disregard of his employer’s interests as defined by law.**

The first issue to be resolved in this case is the nature of Mr. Campbell’s separation from employment. There is no dispute that Mr. Campbell was involuntarily discharged.

The second issue, whether Mr. Campbell is eligible for immediate unemployment benefits or temporarily disqualified, turns on whether his discharge was for misconduct connected with his work. Unless his discharge was for that reason, he is eligible. An employer may discharge an employee for any non-unlawful reason, including non-compliance with workplace rules or standards. However, the standard for imposing a disqualification from immediate full unemployment benefits is different. It must be shown that the employee showed “a willful and wanton disregard of the employer's interest.” The phrase “willful and wanton disregard of the employer’s interests” is a legal term of art that means “deliberate action” or “carelessness or negligence of such a degree or recurrence as to manifest equal culpability, wrongful intent, or evil design.”<sup>14</sup>

Mr. Campbell was discharged for conduct on the job— responding to a challenge to fight by threatening to escalate to lethal violence with a club or gun. Mr. Campbell had a gun nearby, although he did not brandish it at the time. Mr. Campbell testified that he would not have truly shot or clubbed Jeremy. He testified his threats were a form of deterrence or an attempt at de-escalation.<sup>15</sup>

Employers have an interest in the workplace safety of their employees. Gun violence in the workplace is a legitimate fear and concern. Prohibiting employees from bringing weapons to work is among the many commonsense precautions many employers have taken because it eliminates impulsive misuse of firearms. Anchorage Plumbing did not prohibit Mr. Campbell from having his firearm in his motor vehicle on its property. Thus, this case is not about whether Mr. Campbell’s termination had to do with a right to possess his firearm.

The issue is whether Mr. Campbell’s threat to escalate an episode of harassment with use of a club or his readily available firearm constituted willful disregard of his employer’s interest. The answer to that question is yes. The answer to that question would also

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<sup>14</sup> *E.g., Smith v. Sampson*, 816 P.2d 902, 906 (Alaska 1991)(citing Annotation, *Work-Connected Inefficiency or Negligence as “misconduct” Barring Unemployment Compensation*, 26 ALR 3d 1356, 1359 (1969)(citing *Boynton Cab C. v. Neubeck*, 237 Wis. 249, 296 N.W. 636 (1941)).

<sup>15</sup> Since there is no legitimate way to determine the sincerity of threats, Mr. Campbell’s subjective, after the fact description carries no weight. Employers do not have to accept even “joking” threats of violence.

have been yes if Anchorage Plumbing had decided to terminate Jeremy for instigating the event. There is no legitimate dispute that it is a reasonable workplace rule not to threaten to harm co-workers or escalate violence. Mr. Campbell deliberately violated that rule and his employer's legitimate interests.

**ORDER**

The Division's June 14, 2021 denial determination is **Affirmed**.

DATED January 14, 2022.

 <sup>16</sup>

Carmen E. Clark  
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 January 14, 2022, this document was sent to: Robert Campbell (by mail); Anchorage Plumbing & Heating Inc (by mail). A courtesy copy has been emailed to the DETS UI Appeals Team.

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Office of Administrative Hearings

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<sup>16</sup> Signed electronically to accommodate remote work restrictions due to COVID-19.