

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

In the Matter of)
)
DANIELLE KENDALL) OAH No. 21-2341-LUI
) Agency No. 21 1210 ER 10
_____)

APPEAL DECISION

Docket Number: 21 1210 ER 10

Hearing Date: January 14, 2022

CLAIMANT

Danielle Kendall

EMPLOYER

Terry J. Preece, DDS, PC

CLAIMANT APPEARANCES:

Danielle Kendall
Emily Archuleta
Tammy Jorgensen

EMPLOYER APPEARANCES

Dr. Terry J. Preece
Debbie Preece

CASE HISTORY

The employer, Terry J. Preece, DDS, PC, timely appealed a June 16, 2021, determination allowing benefits to the claimant in this case under AS 23.20.379 and concluding that she voluntarily quit her employment with good cause.

The Department of Labor referred the appeal to the Office of Administrative Hearings. 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 January 14, 2022. Ms. Kendall and witnesses Emily Archuleta and Tammy Jorgensen provided testimony under oath. Also participating and testifying under oath were Dr. Terry Preece and his wife, Debbie Preece. The issue is whether Ms. Kendall voluntarily quit suitable work without good cause.

FINDINGS OF FACT

Ms. Kendall was employed as a dental assistant with Terry J. Preece, DDS, PC, from December 3, 2018, until March 24, 2021.¹ Dr. Preece's office is a family dentistry practice where he works as the dentist, his wife Debbie serves as the practice

¹ Ex .1, pp. 6-9; Dr. Terry Preece Testimony.

administrator, and couple's daughter, Jenekah serves as the front-desk person or receptionist.²

While the testimony in this case was very conflicting, all witnesses described an dysfunctional work environment, filled with strong personalities, conflict and drama. Ms. Kendall testified that Jenekah's interactions with her were extremely hostile and unprofessional. As a result, on at least half a dozen occasions, Ms. Kendall raised these issues with Dr. Preece, who was Ms. Kendall's supervisor. As she reported to him, Jenekah was not doing her job as a receptionist, not appropriately managing her time and that appointments were not getting made. She also informed Dr. Preece that Jenekah was verbally abusive and physically threatening toward Ms. Kendall, etc. Specifically, she would call her a "bitch," and threaten to "kick her ass" because she tried to report issues concerning her work performance to her father.³

When this reporting occurred, Dr. Preece would indicate that he wanted everything to work out and that he would speak to his daughter about things. However, rather than improve, the environment at the office would frequently deteriorate after Jenekah learned that Ms. Kendall had spoken to her father.⁴

In addition to Ms. Kendall's testimony, there was also significant corroborating documentation regarding Ms. Kendall's efforts to report this hostile work environment to others. This includes reporting to a third-party consultant that Dr. Preece was using at the time to address practice issues. Although this consultant offered suggestions and indicated that he would speak to Dr. Preece, as Ms. Kendall testified, nothing changed or improved, and the work environment worsened.⁵

Ms. Kendall's testimony was also corroborated by witnesses Emily Archuleta and Tammy Jorgensen. Ms. Archuleta testified that she worked as a dental hygienist with Dr. Preece's office from April 2016 until November 2020. She also testified having left her employment due to the hostile work environment.⁶ Specifically, she said that in the first three years she worked for Dr. Preece, she experienced minimal problems. However, during the last two years significant problems arose after Jenekah joined the practice.⁷

Ms. Archuleta testified that she watched Danielle take the brunt of the name-calling and threats. It was not a positive work environment. When Ms. Archuleta would raise issues regarding Jenekah's work performance, bullying and threats, to both Dr. and Mrs. Preece, they would react negatively and always side with their daughter.

² Dr. Terry Preece Testimony; Debbie Preece Testimony; Danielle Kendall Testimony.

³ Danielle Kendall Testimony.

⁴ Danielle Kendall Testimony.

⁵ Ex. 2.

⁶ Ms. Archuleta testified that because she was seeking to leave on good terms and not have a confrontation with anyone within the office, at the time, she simply said she had found a better job.

⁷ Emily Archuleta Testimony.

Although she tried several times unsuccessfully, Ms. Archuleta explained that she felt like she could not effectively, or meaningfully raise these issues or say anything to Dr. Preece or Mrs. Preece regarding Jenekah or the hostile work environment.⁸

Ms. Jorgensen testified that she was employed at Dr. Preece's office for approximately two years. She was the front-desk/receptionist person. She left because she could not take the negative work environment at the office. Although Jenekah was not an employee during Ms. Jorgensen's tenure, she was frequently present and involved in the issues that arose. Specifically, Ms. Jorgensen testified that there was constant bickering between the three Preece family members and that she would also receive inconsistent instruction and direction, from Dr. and Mrs. Preece. She described feeling like she was constantly caught in a tug-of-war between Dr. and Mrs. Preece. At one point, she also tried to address with Dr. Preece the difficulties she was experiencing in working with Mrs. Preece. Namely, that she was rude, brash, condescending and mean. However, when she reported this to Dr. Preece, he became very upset at Ms. Jorgensen for reporting it and nothing changed. Because she wanted to leave on good terms, the reason she gave for leaving was different than what she testified to at time of hearing. However, based on Ms. Jorgensen's testimony, it was apparent that the real reason for her leaving was more due to the office environment than the reasons she provided at the time.⁹

Dr. and Mrs. Preece also testified in the case. While they had a somewhat different take regarding the conflict between their employees including Jenekah, Ms. Kendall and others, what is important is that they did not tend to deny that the office environment was filled with drama and tension. Dr. Preece testified that while things would improve after he addressed issues between Jenekah and others, even by his own admission and acknowledgment, things were far less than ideal.¹⁰

Ultimately, Ms. Kendall gave Dr. Preece a two week notice of her intention to leave her employment on March 23, 2021. He said it was because she claimed to have obtained a better job.¹¹ As a result of additional personal issues and threats that arose between the parties after giving notice, Ms. Kendall ended up resigning the next day.¹²

On June 16, 2021, the Department's UI claim center issued a notice of non-monetary determination. It concluded that Ms. Kendall voluntarily left her employment with good cause and therefore, awarded her UI benefits.¹³ Terry J. Preece, DDS, PC, timely appealed that determination.¹⁴

⁸ Emily Archuleta Testimony.

⁹ Tammy Jorgensen Testimony.

¹⁰ Dr. Terry Preece Testimony; Debbie Preece Testimony.

¹¹ Ex. 1, pp. 6-9; Dr. Terry Preece Testimony.

¹² Ex. 1, pp. 6-9; Dr. Terry Preece Testimony; Debbie Preece Testimony; Danielle Kendall Testimony.

¹³ Ex. 1, pp. 2-3.

¹⁴ Ex. 1, p. 1.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

AS 23.20.379 Voluntary quit, discharge for misconduct, and refusal of work, in part

- (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...

8 AAC 85.095. Voluntary quit, discharge for misconduct, and refusal of work, in part

- (a) 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 benefits denied for weeks ending before the termination. The termination does not restore a reduction in maximum potential benefits made under AS 23.20.379(c).
- (b) The maximum potential benefits to which a claimant disqualified under AS 23.20.379(a) and (b) would have been entitled will be reduced under AS 23.20.379(c), even if no continued claim has been filed for a week within the disqualification period.
- (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 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;
- (8) other factors listed in AS 23.20.385(b).

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

APPLICATION

The issue in this case is whether Ms. Kendall had good cause for voluntarily leaving her job with Terry J. Preece, DDS, PC. As the appellant in this instance, Terry J. Preece, DDS, PC, has the burden of proof. In a prior Commissioner's decision, the Commissioner held that establishing good cause for leaving suitable employment required circumstances that left the claimant no reasonable alternative but to leave employment. In addition, the claimant must also show that she exhausted all reasonable alternatives before leaving. *Luke*, Comm. Dec. No. 00 2296, March 12, 2001.

Ms. Kendall, Ms. Archuleta and Ms. Jorgensen were all credible witnesses. Their testimony was consistent and corroborating. As it established, Ms. Kendall was subject to unreasonable working conditions: dealing with a hostile, threatening abusive and underperforming employee whose supervisors were unwilling to take any meaningful corrective action because of the family relationship that existed. When efforts were made to report these issues, Ms. Kendall and other employees faced even additional criticism and repercussions. Therefore, Ms. Kendall's attempts to resolve the issue were to no avail. Given Ms. Kendall's credible and highly corroborated testimony regarding her interactions with Dr. Preece, Debbie Preece and Jenekah Preece, it is more likely than not true that her only recourse was to leave the job.

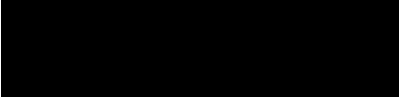
The next question that must be answered is whether she exhausted all reasonable alternatives before leaving. Her evidence showed that she did, and that her attempts to resolve the situation were unsuccessful. Terry J. Preece, DDS, PC, has therefore

failed to meet its burden of proof in this case in demonstrating that a lack of good cause existed for Ms. Kendall to voluntarily leave her employment.

DECISION

The determination issued on June 16, 2021, is **AFFIRMED**.

DATED March 2, 2022.



Z. Kent Sullivan
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 March 2, 2022, this document was sent to: Danielle Kendall (by mail); Terry J. Preece, DDS, PC (by mail); and a courtesy copy to the DETS UI Appeals Team and DETS UI Technical Team (by email).


Office of Administrative Hearings



*Alaska Department of Labor and Workforce Development
Appeals to the Commissioner _*

Please read carefully the enclosed Appeal Tribunal decision. Any interested party (claimant or the Division of Employment and Training Services [DETS]) may request that the Commissioner accept an *appeal* against the decision (AS 23.20.430-435 and 8 AAC 85.154-155).

A Commissioner appeal must be filed within 30 days after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A Commissioner appeal must be in writing and must fully explain your reason for the appeal. You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner appeals *to the Commissioner's Hearing Officer* at the address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present *written argument* to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an *oral argument*. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

**ALASKA DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
COMMISSIONER'S HEARING OFFICER**

P.O. BOX 115509 JUNEAU ALASKA 99811-5509

Phone: (800) 232-4762 E-mail: appeals@alaska.gov Fax: (907)465-3374