

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

In the Matter of	)	
	)	
LAMAR NAPPER	)	OAH No. 21-2345-LUI
<hr style="border: 0.5px solid black;"/>	)	Agency No. 21 1268 10

**APPEAL DECISION**

**Docket Number:** 21 1268 10

**Hearing Date:** January 10, 2022

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Lamar Napper

None

**CASE HISTORY**

The claimant, Lamar Napper timely appealed a June 18, 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 on January 10, 2022. Mr. Napper appeared by telephone as did Chrissie Kretz, the representative for his employer, Alaska USA Federal Credit Union.

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

**FINDINGS OF FACT**

Lamar Napper established a claim for UI benefits effective March 13, 2021. The Division determined that the claimant was not immediately eligible for UI benefits because he voluntarily left suitable employment without good cause as defined by statute and regulation.

Lamar Napper was head hunted to be a financial services representative by the manager of a Fred Meyer branch of Alaska USA. Mr. Napper was working at Credit Union 1 at the time and desired the opportunity for advance offered by the branch manager. Mr. Napper started in June 2016. Within a year he was promoted from Financial Services Representative I to Financial Services Representative II.

Mr. Napper continued to desire to advance in the company. Therefore, he transferred from the Fred Meyer branch which offered more limited opportunity to the Alaska USA

loan center. <sup>1</sup> He started as a Collection Control Officer I in the Early Unit in January 2019.<sup>2</sup> He received a “meets or exceeds” evaluation thereafter.

Although Mr. Napper received the positive evaluation, he perceived there were some problems with his employment at Alaska USA. First, he recruited a friend with no prior banking experience. After the friend was hired, Mr. Napper discovered the friend with fewer qualifications was being paid more money. Mr. Napper raised the issue with his supervisor and Alaska USA gave him a monetary raise even at a time he was being transferred to a new position that would ordinarily have been paid less. Even though Alaska USA corrected the problem, Mr. Napper felt uneasy that the bank would not have done so had he not discovered the issue himself.

Second, Mr. Napper made complaints regarding his supervisor. He believed her management style to be verbally or mentally abusive on occasion. As examples of her conduct, Mr. Napper relayed three incidents: on one she chastised him, telling him “his time was running out to learn” all the things he should know; on another occasion, she berated him in front of co-workers by loudly calling across the room that he was “talking too much and not getting enough work done;” and on at least one other occasion she raised her voice to yell directions at him across the room rather than walk over and address him professionally.<sup>3</sup> When Mr. Napper reported these incidents to HR, the HR supervisor investigated then took the complaints directly to the bank vice president. As a result, the supervisor received additional education on how to handle office communications and convey criticism.

Third, Ms. Napper believed he had been intentionally excluded from overtime assignments. The Early collection team works Tuesday through Saturday. Members of the other collection teams can be offered overtime on Saturdays because they work Monday through Friday. Mr. Napper was offered overtime when he first left the Early team, but he turned it down. He was never offered overtime again, although he found out several members of his advanced team were regularly given Saturday overtime.<sup>4</sup>

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<sup>1</sup> Mr. Napper testified that to move from a Financial Services Representative II to a Financial Services Representative III, the supervisors told him it would be necessary for them to observe him handle an “irate customer” and demonstrate supervisory skills. However, because the clients at the branch were primarily cordial regulars and he lacked authority to make decisions regarding his co-workers, those were unrealistic expectations.

<sup>2</sup> According to Mr. Napper and Ms. Kretz, the loan center had five teams: the early team which handled accounts less than 30 days overdue; the Mid Team that handled accounts 30 to 60 days overdue; the Late Team that handled accounts 60 to 90 days overdue; a Collections Team that handled accounts more than 90 days overdue; and a “VISA” Team that handled a full portfolio of accounts in various stages of collection as well as other responsibilities.

<sup>3</sup> Mr. Napper did not allege that she called him names or used inappropriate language.

<sup>4</sup> The hearing in this case took almost two hours. Why Mr. Napper was not offered overtime and whether he requested overtime once he found out it was being assigned was not made completely clear. Ms. Kretz testified that to the best she could tell from her records he was not eligible for overtime because of the way it was assigned based on call volume, but Mr.

Mr. Napper was promoted to a Collection Control Officer II on April 29, 2020. He received a “meets or exceeds expectations” evaluation in June 2020.

The next step in advancement in the loan department would be to Collection Control Officer III. According to Ms. Kretz, the Alaska USA personnel administrative manager, Alaska USA has both tenure and performance evaluation requirements to move from a Collections Control Officer II to a Collections Control Officer III. The person must have 12 months tenure and have received a performance evaluation that the person met or exceeded the expectations for the Control Officer II position before consideration for promotion could occur. As stated above, Mr. Napper received the appropriate evaluation in June 2020.<sup>5</sup>

Mr. Napper went on Medical Leave from December 1, 2020 to March 2, 2021. When he returned, he approached his manager (not the supervisor) about consideration for promotion to Collections Control Officer III. The manager told him that he would not be eligible for consideration before April 2021 due to tenure requirements and it was likely to be six months or so before he was considered for the promotion due to his recent 5-month absence.

Ms. Kretz testified it is common for the tenure requirement to be interpreted as 12 “active” months in the position so that employees who take parental, FMLA, and other leave do not have that time included; Mr. Napper was not treated differently than similarly situated employees in her opinion. In addition, because Mr. Napper resigned before the calendar 12 months were expired it was impossible to know whether his request would have been reconsidered based on his performance after return.

Mr. Napper resigned on March 12, 2021. He testified that he considered it to have been unfair to tell him he would not immediately be considered for promotion to Collection Control Officer III after his return earlier that month. He believed that his four-year history of positive evaluations in a wide variety of positions as the Fred Meyer branch, the call center, and the loan department demonstrated his capability. In addition, over the almost two years he had been at the loan department he had volunteered or acquiesced with several transfers and shifts in responsibility which demonstrated his commitment to Alaska USA and his overall development as both a team player and leader. He perceived that those actions instead of being appreciated were being held against him.

Mr. Napper testified he did not feel his work was appreciated or that there was “an ability to grow” financially or professionally at Alaska USA. Given that lack and the

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Napper disputed that assessment. However, it was clear that the overtime issue occurred at least a year or more before Mr. Napper resigned.

<sup>5</sup> The next promotional step is to Senior status. Senior status requires not only tenure and favorable evaluations, but also requires a staff opening exist. At the time Mr. Napper was working in the loan department, the Senior positions were all filled with no probable openings for the foreseeable future.

demand of three children at home, he felt it was in his best interest to move forward and find other employment. In his resignation letter he wrote with apparent regret that there had not been a developmental program for people like him who wanted to learn and grow in the company, but he was looking forward to continuing his relationship with his co-workers as a client when he opened his business account that week.

Mr. Napper filed a claim for unemployment benefits. His claim was denied, and he received a six-week disqualification because the Division concluded he voluntarily quit his job reasons that did not constitute legal good cause.

### **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>6</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 for benefits.<sup>7</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>8</sup>

Eligibility turns on the acts 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>9</sup> A claimant who has been involuntarily discharged by their employer is eligible for full unemployment 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,

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<sup>6</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>7</sup> 8 AAC 85.010(a)(14); 8 AAC 85.085.

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

<sup>9</sup> 8 AAC 85.010(a)(20).

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>10</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;
- (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

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<sup>10</sup> 8 AAC 85.0895(d)(1).

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>11</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>12</sup> A compelling reason is “one that causes a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave employment.”<sup>13</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>14</sup> However, the employee is “not expected to do something futile or useless in order to establish good cause for leaving employment.”<sup>15</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>16</sup>

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

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<sup>11</sup> 8 AAC 85.095(c).

<sup>12</sup> *Wescott*, 996 P.2d at 726-28 adopting the BPM criteria.

<sup>13</sup> *Calvert v. State, Dept. of Labor & Workforce Development, Employment Sec. Div.*, 251 P.3d 990, 1001 (Alaska 2011)(adopting BPD criteria).

<sup>14</sup> *Id.* at 1002-06.

<sup>15</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>16</sup> *Id.* at 1002-06.

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>17</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>18</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.

#### **DECISION**

##### **Mr. Napper did not establish legal good cause for his voluntary resignation.**

Mr. Napper voluntarily resigned from Alaska USA. He did not do so for any of the specific reasons listed in 8 AAC 85.095(c)(1)-(7). Whether legal good cause existed thus entitling Mr. Napper to immediate unemployment benefits must, therefore, be analyzed under 8 AAC 85.095(c)(8), the catchall provision.

Mr. Napper was required to prove that he had a compelling reason for leaving work and exhausted all reasonable alternatives to quitting.<sup>19</sup> This is a high standard. A compelling reason is "one that causes a reasonable and prudent person of normal

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Wescott*, 996 P.2d at 726-28 adopting the BPM criteria.


sensitivity, exercising ordinary common sense, to leave employment.”<sup>20</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. Mr. Napper did not do so.

Mr. Napper resigned because he felt unappreciated and that the opportunities for his advancement were limited. Those may be legitimate personal reasons to leave employment. However, they do not make Mr. Napper eligible for immediate collection of unemployment benefits. They do not establish legal as opposed to social good cause.

Most of the complaints Mr. Napper had about Alaska USA were garden variety complaints about employers: unexpected wage disparity; occasionally unpleasant or embarrassing supervisors; and potential favoritism. The fact they are garden variety does not make them more tolerable, but Alaska USA responded to each of Mr. Napper’s concerns: it amended his wages when he showed a disparity existed; it took corrective action regarding his supervisor’s behavior; and investigated his complaint about overtime even though he disagreed with the conclusion. There was no indication that Mr. Napper was treated differently from other similarly situated employees when his supervisor told him that there could be a delay in considering his promotion due to the length of his absence during the trigger period. On this record it cannot be said that Mr. Napper had no alternative other than to quit he could have requested reconsideration of his promotion status after he showed that did not lose ground at his work during his absence; he could have kept his job and used it as the springboard to another position outside Alaska USA; or taken other action.

The Division’s June 18, 2021 denial decision is **Affirmed**.

DATED January 11, 2022.

<sup>21</sup>  
Carmen E. Clark  
Administrative Law Judge

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<sup>20</sup> *Calvert, supra.*

<sup>21</sup> Signed electronically to accommodate remote work restrictions due to COVID-19.



**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 11, 2022, this document was sent to: Lamar Napper (by mail and email); Alaska USA Federal Credit Union (by mail). A courtesy copy has been emailed to the DETS UI Appeals Team and DETS UI Technical Team.

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Office of Administrative Hearings