



APPEAL TRIBUNAL DECISION

Docket number: 21 1366 **Hearing date:** November 18, 2021

CLAIMANT:

BENITA HENRY

EMPLOYER:

MP2 ALASKA LLC

CLAIMANT APPEARANCES:

Benita Henry

EMPLOYER APPEARANCES:

None

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a July 9, 2021 determination which denied benefits under Alaska Statute 23.20.379. The issue before the Appeal Tribunal is whether the claimant voluntarily quit suitable work without good cause.

FINDINGS OF FACT

The claimant established a claim for unemployment insurance benefits effective April 11, 2021.

The claimant began work for the prior owners of the company in 2016 or 2017. She worked for approximately one year under the new ownership. She last worked as a customer service association on January 18, 2021.

The claimant had been off work for several months due to her medical condition. She returned to work in mid-December. The claimant was only getting scheduled to work for three days of the week instead of the 35 hours a week she had worked prior to taking leave. The claimant did not attempt to contact the manager or the corporate office to ask about her hours. She decided she could not afford to work part time hours. Further, the claimant believed her medical condition affected her decision as this happened during a "low" period in her condition.

PROVISIONS OF LAW

AS 23.20.379 provides 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 provides in part:

- (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).

AS 23.20.385(b) provides, in part:

- (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.

CONCLUSION

A worker who voluntarily leaves work goes from a situation in which the worker has at least some income to a situation in which the worker has no income. The burden is therefore upon the worker to show that leaving work was the more beneficial course for the worker to pursue. Kimmerly, Comm'r. Dec. 9224409, April 30, 1992.

It is understandable that the claimant was upset and concerned about not being scheduled more hours. However, she has not shown how quitting work was more beneficial. Therefore, the claimant's reason for quitting work was not compelling and good cause for quitting work was not established.

DECISION

The determination issued on July 9, 2021 is **AFFIRMED**. Benefits are **DENIED** for the weeks ending January 23, 2021 through February 27, 2021. The three weeks are reduced from the claimant's maximum benefits. The claimant may not be eligible for extended benefits under AS 23.20.406-409.

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.

Dated and mailed on November 23, 2021.

Kimberly Westover

Kimberly Westover, Appeals Officer