

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

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| In the Matter of |) | |
| |) | |
| MATTHEW CROCKETT |) | OAH No. 21-2359-LUI |
| _____ |) | Agency No. 21 1374 10 |

APPEAL DECISION

Docket Number: 21 1374 10

Hearing Date: January 13, 2022

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Matthew Crockett

None

CASE HISTORY

The claimant, Matthew Crockett timely appealed a May 28, 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 13, 2022. Mr. Crockett appeared by telephone. His employer, The Alaska Club, Inc. (Alaska Club) was called and a message left, but no response received.

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.

determination which denied Unemployment Insurance (UI) benefits under AS 23.20 .

FINDINGS OF FACT

Matthew Crockett established a claim for UI benefits effective July 18, 2020. The Division determined that the claimant was not eligible for UI benefits because he voluntarily resigned from employment for reasons that did not constitute legal good cause.

Matthew Crockett is a long-time Alaskan. He worked seventeen years for the Anchorage School District (ASD) in the gifted learning program. In October 2019 he resigned from the school district to start his own photography studio. Mr. Crockett appears to have been inexperienced with the business aspects needed to be self-employed, although he appears to have been an experienced and passionate photographer. As such, he partnered with another photographer who he believed did have suitable business experience to help make the enterprise successful.

The enterprise was not immediately successful for reasons not related to this appeal, but direct impacts from the COVID-19 pandemic then hampered growth in 2020. In addition, Mr. Crockett tore his hamstring and needed treatment and time to recover.

Mr. Crockett decided to take parttime employment at the Alaska Club during his recovery. The wages were barely minimum, so he did not intend the job to be his primary support, but he did consider it to be a useful adjunct to his budget. Employment would give him a \$50.00 monthly family membership for him and his two sons, ages fifteen and eight; access to facilities to do his tendon rehabilitation; and exposure to potential photography clients.

His first day was February 12, 2020. Mr. Crockett's assigned job was to open the South Anchorage Alaska Club and provide member services. He started work at 4:00 a.m. and usually worked to 10:00 a.m., three sometimes four days a week.

After about four months it was clear to Mr. Crockett that the downsides to the job outweighed his previously perceived positives. His children were not using the gym as anticipated due to COVID-19. His tendon rehab was essentially complete. The wages were even less than anticipated and, certainly, not wages that could support him. Lastly, he was regularly tired with less energy to spend with his children, work at his photography business, or look for a better job. Mr. Crockett had applied for positions with Alaska Pacific University and Providence Hospital that were more in keeping with his educational background and experience and which would provide a meaningful salary. Mr. Crockett also had some concerns that he was leaving his sons alone too much during the pandemic.

Mr. Crockett resigned from the Alaska Club on July 9, 2021. He gave two weeks' notice and his last day was July 18, 2021. A copy of his resignation letter appears in Exhibit 1 at page 14. In the email, Mr. Crockett mentions the impact his job as an opener is having on his sons.

Mr. Crockett applied for unemployment effective July 18, 2021. The Division denied his claim after concluding he voluntarily resigned from work for reasons that did not equal good cause as defined by law.

Mr. Crockett was not offered the jobs he had applied for at Alaska Pacific University or Providence. He remained unemployed until summer 2022 when he went to work for Chugach Adventure Guides. In August 2022 Mr. Crockett returned to employment with ASD.

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).¹ 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.² If the claimant is eligible, the division conducts the second step and issues a "monetary determination" calculating the benefit amount payable to the claimant.³

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.⁴ 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, 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

¹ 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.

² 8 AAC 85.010(a)(14); 8 AAC 85.085.

³ 8 AAC 85.010(a)(12).

⁴ 8 AAC 85.010(a)(20).

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.”⁵ 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 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).⁶

⁵ 8 AAC 85.0895(d)(1).

⁶ 8 AAC 85.095(c).

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.”⁷ A compelling reason is “one that causes a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave employment.”⁸ 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.⁹ However, the employee is “not expected to do something futile or useless in order to establish good cause for leaving employment.”¹⁰ 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.”¹¹

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.¹² 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.¹³

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

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

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

⁹ *Id.* at 1002-06.

¹⁰ *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).

¹¹ *Id.* at 1002-06.

¹² *Id.*

¹³ *Id.*

(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. Crockett did not establish legal good cause for his voluntary resignation: while he described a legitimate personal reason to quit work, he did not demonstrate a legally compelling reason for doing so or that he provided notice and an opportunity to cure to his employer.

Mr. Crockett voluntarily resigned from the Alaska Club. 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 entitling Mr. Crockett to immediate unemployment benefits must, therefore, be analyzed under 8 AAC 85.095(c)(8), the catchall provision.

Mr. Crockett was required to prove that he had a compelling reason for leaving work and exhausted all reasonable alternatives to quitting.¹⁴ A compelling reason is "one that causes a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave employment."¹⁵ 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. However, employees are not required to request accommodations from their employer when it appears such requests would be futile.¹⁶

The evidence presented by Mr. Crockett did not meet that standard. Mr. Crockett indicated his resignation was prompted in part by the need to supervise his sons who by July were no longer going to school. However, Mr. Crockett's oldest son was fifteen and his younger son was nine. They were of an age where they could be left without other supervision for at least a few hours. More importantly, however, Mr. Crockett testified that he did not like leaving them alone so early in the morning. Mr. Crockett had to leave his home by 3:30 a.m. to get to the Alaska Club to open it at 4:00 a.m. That is a

¹⁴ *Wescott*, 996 P.2d at 726-28 adopting the BPM criteria.

¹⁵ *Calvert*, *supra*.

¹⁶ *Id.*

legitimate concern. However, Mr. Crockett did not ask the Alaska Club to change his hours to address that concern. He did not give his employer the opportunity to cure that problem with his employment.


Mr. Crockett also testified he resigned because he was not making enough money. There is no doubt that Mr. Crockett could not support himself on the \$11.00/hr. he was paid by the Alaska Club. Mr. Crockett submitted an email for the hearing demonstrating that he received a monthly take-home salary of approximately \$581.00. His expenses were significantly greater. However, the salary at the Alaska Club was not going to or intended to support Mr. Crockett at the time he took the job.

The real reason Mr. Crockett resigned was he made a cost-benefit analysis of whether it would be more useful to spend the hours he was working at the Alaska Club either searching for more appropriate jobs, promoting his photography business, or spending time with his children. Mr. Crockett concluded it was more beneficial to resign.

That calculus was not necessarily incorrect. It was certainly a valid personal decision. However, valid personal decisions do not automatically establish legal good cause. Immediate unemployment benefits are not available to assist a person who has decided to quit to look for a better job unless other factors not presented in this case exist. Nor are immediate unemployment benefits available to assist a person who is no longer with childcare in the circumstances presented here.

The Division's May 28, 2021 denial decision is **Affirmed**.

DATED January 14, 2022.


¹⁷
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: Matthew Crockett (by mail); Alaska Club Inc (by mail). A courtesy copy has been emailed to the DETS UI Appeals Team and DETS UI Technical Team.


Office of Administrative Hearings

¹⁷ Signed electronically to accommodate remote work restrictions due to COVID-19.