



APPEAL TRIBUNAL DECISION

Docket number: 21 1514 **Hearing date:** January 7, 2022

CLAIMANT:

YATNNA GOMEZ ABREU
[REDACTED]

EMPLOYER:

ANCH SCHOOL DISTRICT 9011
[REDACTED]

CLAIMANT APPEARANCES:

Yatnna Gomez Abreau

EMPLOYER APPEARANCES:

None

CASE HISTORY AND FINDINGS OF FACT - TIMELINESS

The claimant filed an appeal against a March 21, 2021 determination that denied benefits under AS 23.20.379 on the grounds that the claimant voluntarily quit work. The Division mailed the determination to the claimant's address of record on June 24, 2021. The claimant's appeal was filed on July 30, 2021, giving rise to the issue of the timeliness of the claimant's appeal.

The claimant did not recall receiving the determination. She had relocated a few weeks before and she had provided her new address to the Division, but she had difficulty receiving mail at her new address initially, until matters were resolved with the Post Office. The claimant did receive overpayment notices from the Division and she immediately began trying to contact the Division by phone to find out what they were about. Due to the large volume of phone calls the Division was receiving, the claimant did not get through to a representative for several days despite repeated calls. The claimant learned of the determination on July 30, 2021 and immediately filed her appeal.

PROVISIONS OF LAW - TIMELINESS

AS 23.20.340 provides in part;

- (e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant shows that the application was delayed as a result of circumstances beyond the claimant's control.

- (f) If a determination of disqualification under AS 23.20.360, 23.20.362, 23.20.375, 23.20.378 - 23.20.387, or 23.20.505 is made, the claimant shall be promptly notified of the determination and the reasons for it. The claimant and other interested parties as defined by regulations of the department may appeal the determination in the same manner prescribed in this chapter for appeals of initial determinations and redeterminations. Benefits may not be paid while a determination is being appealed for any week for which the determination of disqualification was made. However, if a decision on the appeal allows benefits to the claimant, those benefits must be paid promptly.

8 AAC 85.151 provides in part;

- (b) An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. However, the 30-day period may be extended for a reasonable time if the claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

CONCLUSION - TIMELINESS

An appellant has the burden to establish some circumstance beyond the appellant's control prevented the timely filing of the appeal.

It is clear from Estes v. Department of Labor, 625 P.2d 293 (Alaska 1981) that a late claimant must show some quantum of cause; implicit is the requirement that the claimant's delay be caused by some incapacity, be it youth, illness, limited education, delay by the post office, or excusable misunderstanding, at the very least, and that the state suffer no prejudice. If the delay is short, the claimant need show only some cause; for longer delays, more cause must be shown. Borton v. Emp. Sec. Div., Super. Ct., 1KE-84-620 CI, (Alaska, October 10, 1985).

The claimant established that her mail delivery was unreliable when she first relocated. She was unable to get through to the Division several days before she finally got through, likely within the appeal period. These circumstances were outside of the claimant's control and delayed the filing of her claim, which was only three days late.

DECISION - TIMELINESS

The claimant's appeal from the notice of determination issued on June 23, 2021 is **ACCEPTED** as timely filed.

CASE HISTORY - SEPARATION

The determination issued June 23, 2021 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 or was discharged for misconduct connected with the work.

FINDINGS OF FACT - SEPARATION

The claimant began work for the employer in November 2020. She last worked on January 13, 2021. At that time, she worked full-time as a teacher assistant.

The claimant's mother was hospitalized in the Dominican Republic with severe illness caused by the COVID-19 virus. The claimant was advised that her mother's doctors expected her to be placed on a ventilator. The claimant decided she should travel to see her mother due to her mother's serious illness. The claimant had not been employed long enough to be eligible for a leave of absence, she had to voluntarily quit the job in order to travel to see her mother. While the claimant was attempting to buy a ticket on January 16, 2021, she learned that her mother's condition had improved and the claimant was not required to travel at that time.

The claimant then received a call from a former employer which had been closed down and only open reduced hours because of the COVID-19 pandemic. The claimant agreed to return to work for that employer, but was not scheduled to work for several weeks until hours were available for her.

PROVISIONS OF LAW - SEPARATION

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 - SEPARATION

Alaska Statute 23.20.379 requires the Division to examine the reason a claimant is unemployed, and to apply penalties if a claimant voluntarily leaves work without good cause. Factors the Department will consider when determining good cause are described in regulation 8 AAC 85.095(c). The claimant did not leave work for one of these reasons. The claimant in this case voluntarily quit work to travel to see her mother who was very ill. Although she left to see her mother who was ill, she did not leave work for the purpose of providing care for her, as described in 8 AAC 85.095(c)(2).

This leaves the Tribunal to consider other factors that would influence a reasonably prudent person in the claimant's circumstances.

In Missall, Com. Dec. 8924740, April 17, 1990, the Commissioner of Labor summarized Department policy regarding what constitutes good cause for voluntarily leaving work. The Commissioner held, in part:

The basic definition of good cause is 'circumstances so compelling in nature as to leave the individual no reasonable alternative.' (Cite omitted.) A compelling circumstance is one 'such that the reasonable and prudent person would be justified in quitting his job under similar circumstances.' (Cite omitted). Therefore, the definition of good cause contains two elements; the reason for the quit must be compelling, and the worker must exhaust all reasonable alternatives before quitting.

Although it is understandable that the claimant would want to see her mother if her health was deteriorating, the claimant quit work and then began looking for a ticket to travel to see her mother. If she had continued to work until she had purchased a ticket and had a date to leave, she would not have unnecessarily quit her job. The claimant has not established that she had a compelling reason to leave work at the time she did so.

The Tribunal concludes the claimant voluntarily quit work without good cause as it is described in the regulation. The penalties of AS 23.20.379 are appropriate.

DECISION - SEPARATION

The determination issued on June 23, 2021 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending January 16, 2021 through February 20, 2021. The three weeks remain 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 January 13, 2022.

Rhonda Bunes, Appeals Officer