



APPEAL TRIBUNAL DECISION

Docket number: 21 1596 **Hearing date:** January 10, 2022

CLAIMANT:

KYLE LARSON

EMPLOYER:

ABM INDUSTRY GROUPS

CLAIMANT APPEARANCES:

Kyle Larson

EMPLOYER APPEARANCES:

None

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a August 4, 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 began work for the employer in July 2020. He last worked on June 9, 2021. At that time, he worked full time as a maintenance worker.

When the claimant accepted the position, he expressed concerns about the hourly pay rate being only \$14 per hour. His supervisor assured him that he would get a pay raise after 90 days. The claimant agreed and started working. After 90 days, the employer raised his pay to \$15 an hour. The claimant again expressed his concern as he usually made significantly more per hour as a maintenance worker. His supervisor asked the claimant to be patient and wait until the next summer when they had some big jobs that would pay him bonuses that would increase his wages. Again, the claimant agreed and continued working.

The claimant was paid every two weeks by direct deposit. He was never given a pay stub and was only able to determine what he was paid from the amount in his direct deposit. The claimant attempted to contact the employer's local office and

corporate offices to obtain copies of timesheets but was never provided the requested information.

On June 9, 2021, the claimant had waited about a month for a promised bonus that was supposed to be for \$300 dollars. He called his direct supervisor, Willy, that day and complained that he did not get the bonus on the last check even though it was promised to be on the last few paychecks. The supervisor assured the claimant it would be on the next check, but the claimant was unconvinced. He then called the facility manager, Ken, for assistance. Ken told the claimant that he had nothing to do with bonuses and that was between him and the supervisor, Willy.

The claimant called back to his supervisor and resigned. He felt the employer had failed to pay him as promised. The claimant noted that when he received his last deposit, the \$300 bonus was still not included.

The Tribunal takes official notice of the Alaska Labor and Standards Division website, wage and hour page under frequently asked questions, which states:

15) What kind of information is my employer supposed to put on my pay stub?

Your employer must give you a pay stub each pay period that explains how long you worked, how much money you earned and how much money you were paid. The stub must include the number of straight-time and overtime hours you actually worked; your rate of pay; your gross wages; your deductions for taxes; and other deductions you have authorized your employer to make. The pay stub also must state the beginning and ending dates of the pay period.

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.

AS 23.10.430 provides, in part:

- a) An employer shall permit an employee or former employee to inspect and make copies of the employee's personnel file and other personnel information maintained by the employer concerning the employee under reasonable rules during regular business hours. The employer may require an employee or former employee who requests copies of material under this subsection to pay the reasonable cost of duplication.

8 AAC 15.165 provides, in part:

- (h) An employer shall give each employee a written or electronic statement of earnings and deductions for each pay period. The statement of earnings and deductions must contain the employee's
 - (1) rate of pay;
 - (2) gross wages;
 - (3) net wages;
 - (4) beginning and ending dates of the pay period;
 - (5) repealed 9/28/85;
 - (6) repealed 9/28/85;
 - (7) federal income tax deductions;
 - (8) Federal Insurance Contribution Act deductions;
 - (9) Alaska Employment Security Act contributions;
 - (10) board and lodging costs;
 - (11) advances;
 - (12) straight time and overtime hours actually worked in the pay period;and
 - (13) other authorized deductions

CONCLUSION

The employer did not participate in the hearing. The employer's documentary evidence is considered hearsay evidence, unsupported by sworn testimony of the claimant's supervisors or co-workers. Hearsay evidence is insufficient to overcome direct sworn testimony.

The provisions of AS 23.20.379(a)(1) require disqualification of a claimant's unemployment insurance benefits if he leaves suitable work without good cause. If a claimant leaves unsuitable work, he is not required to show good cause for quitting.

The Employment Security Division's Benefit Policy Manual, Section VL 425-3 provides, in pertinent part;

“If the conditions of the work violate a state or federal law concerning wages, hours, safety or sanitation, the worker has good cause for leaving, regardless of the length of time that the worker has worked under the objectionable condition. Suitable work does not include:

(4) Employment under illegal conditions of pay or hours.”

In this case, the claimant was not receiving a pay stub, which should have clearly explained the claimant’s pay and deductions. Furthermore, when he asked for copies of his timesheets, his requests were ignored.

Therefore, the employer violated the State of Alaska requirement to provide pay information with each paycheck, which renders the work “unsuitable.” The claimant is not required to show good cause for quitting unsuitable work.

DECISION

The determination issued on August 4, 2021 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending June 12, 2021 through July 17, 2021, if otherwise eligible. The three weeks are restored to the claimant’s maximum benefits. The determination will not interfere with the claimant’s eligibility 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 11, 2022.

Kimberly Westover

Kimberly Westover, Appeals Officer