

### APPEAL TRIBUNAL DECISION

**Docket number:** 21 2333 **Hearing date:** August 10, 2022

**CLAIMANT: EMPLOYER:**

BRITTNI DEHMER THE SUTCLIFFE CLINIC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Brittni Dehmer None

#### CASE HISTORY

The claimant timely appealed a November 23, 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 on January 7, 2021. She last worked on June 3, 2021. At that time, she worked part-time as a behavioral technician.

The claimant’s last day of work was her children’s last day of school before their school’s summer break began. The claimant was unable to find summer childcare for her children, ages 7- and 10-years, so she requested and was granted a leave of absence during the summer break.

The claimant’s mother lived with her and helped with after school childcare, but the claimant’s mother had a serious illness that was getting worse and she was unable to care for the children all day while the claimant worked. The claimant called local agencies such as the Girls and Boys Club, but she could not locate any summer programs or childcare centers that were not closed because of the COVID-19 pandemic. The claimant had recently relocated to the area and did not have local connections to help find childcare. The claimant returned to work after the school break ended.

#### 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

The claimant believed that she was eligible for unemployment benefits under the provisions of the CARES Act, Public Law 116-136 Sec. 2102. That section describes the federal Pandemic Unemployment Assistance (PUA) program, which did contain an eligibility provision for workers who were unemployed because they left work to provide care for children due to school and other agency closures directly related to COVID-19. Eligibility for the PUA program requires that a claimant have exhausted all right to regular unemployment benefits. The claimant in this case was eligible for regular unemployment benefits from benefit claims effective March 22, 2020 and March 21, 2021, as well as extended benefits from the federal Pandemic Emergency Unemployment Compensation (PEUC) program. Because of her eligibility for regular and extended benefits, the provisions of the CARES Act Sec. 2102 do not apply and the claimant’s eligibility must be determined under the State of Alaska statutes, regulations and policies of the regular unemployment program.

Any time a claimant establishes a claim for unemployment benefits, the Division must examine the reason for the claimant’s unemployment at that time and determine if penalties should be applied under AS 23.20.379. The claimant in this case was unemployed because she requested a leave of absence for the school summer break because she did not have childcare for her young children. The Division determined that the claimant voluntarily left suitable work without good cause.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work, and includes leaving work to care for an immediate family member with a disability or illness.

The Division’s Benefit Policy Manual, Voluntary Leave, Personal Circumstances, 155.1 Care of Family Member, holds:

*A worker who leaves work to care for an ill or disabled family member leaves work with good cause if the employer would not grant a leave of absence or a leave of absence was not practical in their situation. While the worker does have to make an attempt to preserve their employment by requesting leave, the worker does not have to explore alternative care for the family member prior to quitting.*

*A worker does not have good cause to leave work to care for a family member who is not ill or disabled.*

*…*

*D. Obligation to Provide Care for a Family Member who is not Ill or Disabled*

*Leaving work to provide care for a family member who is not ill or disabled is without good cause. Workers need to arrange for care to be provided by other care-givers.*

The claimant’s children are not ill or disabled. Leaving work to care for children is not good cause, even with the additional difficulty of finding childcare in a new area during a pandemic.

The regulation also directs the Department to consider the suitability of the work as laid out in AS 23.20.385(b). The claimant did not establish that the work was a risk to her health, safety or morals, or that she was not physically fit for the work. 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.*

The claimant has not established that the work was unsuitable and she did not quit work for a reason that is allowable under 8 AAC 85.095(c). The Tribunal

cannot conclude that the claimant had good cause to voluntarily leave work at the time she did. The penalties of AS 23.29.379 are appropriate.

#### DECISION

The determination issued on November 23, 2021 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending June 12, 2021 through July 17, 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 August 12, 2022.

 Rhonda Buness, Appeals Officer