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### APPEAL TRIBUNAL DECISION

**Docket number:** 21 2359 **Hearing date:** August 12, 2022

**CLAIMANT: EMPLOYER:**

BOB AUBREY DIVERSIFIED MAINT SYSTEMS LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Bob Aubrey None

#### CASE HISTORY

The claimant timely appealed two determinations issued on December 16, 2021 which denied benefits under Alaska Statute 23.20.379 and 23.20.406-409. 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 and whether the claimant is eligible for extended benefits.

#### FINDINGS OF FACT

The claimant began work for the employer on June 28, 2021. He last worked on July 2, 2021. At that time, he worked part-time as a janitor.

The claimant was told on hire that he would work 5-6 hours a day cleaning a retail business in a nearby community. The claimant asked if the hours were guaranteed because he did not think the 20-minute drive to the worksite was worthwhile otherwise. He was assured he would work 5-6 hours per day. The claimant was trained for the job by a person who did not speak much English. The claimant had to aske the store manager what his duties were because of the lack of communication. The claimant consistently completed the work in about 3 hours his first few days.

The employer did not have a local office or any local supervisors. The claimant was interviewed and hired by phone. He checked in each day using the employer’s phone system. The phone system offered options to contact supervisors and human resources, but the phones were not answered and voice mail was full or not set up. The claimant began trying to contact the employer after his first few days, but was unable to contact anyone all week. He did not contact his trainer because of the communication difficulty.

On Friday, the claimant calculated his earnings based on the hours worked and determined that at three hours per day he was not earning enough to pay for the costs of his commute that week, considering gas and car insurance. As he was unable to reach any representative of the employer to ask about the hours he was promised on hire, he decided to quit the work and he did not return after July 2, 2021.

#### 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....

(2) was discharged for misconduct connected with the insured worker's last work.

**8 AAC 85.095 provides in part:**

1. A disqualification under AS 23.20.379 (a) and (b) remains in effect for six consecutive weeks or until terminated under the conditions of AS 23.20.379 (d), whichever is less. The disqualification will be terminated immediately following the end of the week in which a claimant has earned, for all employment during the disqualification period, at least eight times his weekly benefit amount, excluding any allowance for dependents. The termination of the disqualification period will not restore benefits denied for weeks ending before the termination. The termination does not restore a reduction in maximum potential benefits made under AS 23.20.379 (c).

(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 23.20.406 provides in part:

#### (h) An individual is not eligible to receive extended benefits for any week of unemployment in the individual's eligibility period if the individual has been disqualified for benefits because the individual

#### voluntarily left work, was discharged for misconduct, or refused an offer of suitable work, unless the disqualification imposed for those reasons has been terminated in accordance with AS 23.20.379(d).

#### CONCLUSION

The claimant in this case voluntarily quit work after one week because he was not getting the hours he was promised on hire.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause to voluntarily leave work, including leaving work due to an employment agreement related directly to the work, if the claimant has no other reasonable alternative but to leave work.

*An employer's failure to compensate a worker in the amount, in the manner, and at the time agreed upon at the time of hire is considered good cause for voluntarily leaving work. Zimmerman, Com. Dec. 9121096, September 10, 1991.*

The claimant was promised on hire that he would work 5-6 hours per day. He would not have taken the job if he had known he would only work about three hours a day because he knew the drive to the nearby community would not be financially feasible for three hours of work per day.

The definition of good cause contains two elements. The employee must have a compelling reason, and there must have been no other reasonable option.

The claimant attempted to contact the employer about the discrepancy in hours he was promised on hire, but he was unable to reach anyone or leave a message for anyone. Having no way to contact the employer, he decided to leave the work.

Considering Zimmerman, and the claimant’s circumstances, the Tribunal finds the claimant had good cause to leave the work because the work was not what he had agreed to.

Because there is no longer any penalty imposed under AS 23.20.379(a), the matter of whether the claimant met the requirement to purge the extended benefit denial penalty under AS 23.20.406-409 is moot.

#### DECISION

The determination issued on December 16, 2021 is **REVERSED.** Benefits are **ALLOWED** for the weeks ending July 10, 2021 through August 14, 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.

The determination issued on December 16, 2021 is **REVERSED.** The claimant is not ineligible 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 16, 2022.

Rhonda Buness, Appeals Officer