



APPEAL TRIBUNAL DECISION

Docket number: 22 0314 **Hearing date:** August 1, 2022

CLAIMANT:

SUSAN ROATCH

CLAIMANT APPEARANCES:

Susan Roatch
Charlene Zabriskie

EMPLOYER:

GRAY MEDIA GROUP INC

EMPLOYER APPEARANCES:

None

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a March 11, 2022 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 or was discharged for misconduct connected with the work.

FINDINGS OF FACT

The claimant began work for the employer on August 21, 2021. She last worked on February 24, 2022. At that time, she worked full-time as a master control operator.

On Thursday, February 24, 2022, the claimant was given a disciplinary notice by her employer. That document, a final written warning, referenced an incident on Monday, February 21, 2022 at 1:04 PM when the radio station was "in black" and the claimant failed to respond until notified by the operations manager.

The claimant asserts that her supervisor yelled at her on several occasions and that, in conjunction with the disciplinary notice, caused the claimant to decide not to return to work on her next scheduled shift. The claimant did not return to work and did not provide her employer with notice that she intended to quit the job. On

February 27, 2022, the claimant's supervisor called her. During the conversation, the claimant stated that she figured she was going to get fired, so she quit.

The claimant experienced severe emotional distress as a result of the job separation, indicating that she has PTSD and separating from employment was very difficult for her.

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:

- (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).
- (d) "Misconduct connected with the insured worker's work" as used in AS 23.20.379(a)(2) means
- (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; willful and wanton disregard of the 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....

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

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. The claimant in this matter did not leave work for one of the allowable reasons. 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.

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 Commissioner of Labor held in Spence, 9324931, February 9, 1994:

Leaving in anticipation of a discharge is a voluntary leaving, not a discharge. This is true no matter how well founded the worker's belief was that the employer would discharge the worker if the worker did not leave. West, Comm. Dec 9321473, June 15, 1993; [W]e hold that quitting a job in anticipation of discharge is without good cause.

The claimant in this case quit her job without giving notice, after being given a disciplinary notice by her employer. She believed it was likely that the employer would discharge her if she returned to work. In applying Spence, the Tribunal must conclude the claimant did not have good cause for voluntarily leaving work. The penalties of AS 23.20.379 are appropriate.

DECISION

The determination issued on March 11, 2022 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending March 5, 2022 through April 9, 2022. The three weeks are 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 2, 2022.

Solara Ames

Solara Ames, Appeals Officer