



APPEAL TRIBUNAL DECISION

Docket number: 22 0679 **Hearing date:** August 26, 2022

CLAIMANT:

TROY MALSTROM

CLAIMANT APPEARANCES:

Troy Malstrom

DETS APPEARANCES:

None

EMPLOYER:

SUBSURFACE CONSTRUCTION LLC

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a July 21, 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.

FINDINGS OF FACT

The claimant began work for the employer in August of 2021. He last worked on April 27, 2022. At that time, he worked full-time as a crew foreman.

On April 5, 2022, the owner of the company presented each of the employees with a non-compete agreement and requested that the document be signed. When the claimant asked what he might expect in return for signing the contract, the employer responded that he would get to keep his job. The claimant was not given a deadline to sign the contract, but he decided to begin seeking other employment while continuing to work for the employer.

On April 15, 2022, the claimant texted his employer and provided notice of his intent to resign his position. In that text, the claimant stated that he would be taking a job on the North Slope, didn't have an exact date, and wanted to provide as much notice as possible. The following day, the claimant met with the owner to discuss the end of his employment. The employer responded that they planned to have a new employee start work in two weeks, and the claimant established his last day of work as April 27, 2022, following that conversation.

The claimant had been in contact with a North Slope employer and was working toward getting his HazMat paperwork and fingerprinting in order. As of April 15, 2022, he believed that he would have all paperwork complete within about ten days. On the date he submitted his notice of resignation, he did so because he believed the job on the North Slope would materialize shortly. He did not have a definite offer of work with the employer, nor did he have a definite start date.

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

A worker may give two or more reasons for quitting work. However, the one reason that was the precipitating event is the real cause of the quit, with the other reasons being incidental. In many cases, the quit is in fact caused by a combination of factors, but, although the other factors contributed to the worker's overall dissatisfaction, the worker would not have quit at the particular time, had it not been for the precipitating event. In such cases, good cause depends on the precipitating event.

"Once having voluntarily quit, it is the burden of the claimant to establish good cause." Fogleson, Comm'r Dec. 8822584, February 28, 1989.

The claimant has the burden of establishing good cause for voluntarily leaving work. The basic definition of good cause requires the existence of circumstances so compelling in nature as to leave the claimant no reasonable alternative but to leave employment. The definition contains two elements. The reason for leaving must be compelling, and the worker must exhaust all reasonable alternatives before leaving. Luke, Comm'r Dec., 00 2296, March 12, 2001.

Regulation 8 AAC 85.095(c)(7) holds that a claimant may have good cause to voluntarily leave work when he does so in order to accept a bonafide offer of work that offers better wages, benefits, hours, or other working conditions. The reasons for the new work not materializing must not be the fault of the worker.

In this case, the claimant felt that the employer was implying a threat of discharge in the event that he chose not to sign a non-compete contract. At the time of his resignation, the claimant had not been given a deadline to sign the contract and the employer had not discharged the claimant. The claimant chose to leave the work in order to pursue other employment opportunities, but did not have a bonafide offer of work.

On the day the claimant quit his job, he did so because he believed that he was well-positioned to start work on the North Slope. Quitting work to pursue an offer of employment is not a compelling reason for leaving existing employment. Therefore, good cause for quitting work has not been established in this case.

DECISION

The determination issued on July 21, 2022 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending May 7, 2022 through June 11, 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 29, 2022.

Solara Ames

Solara Ames, Appeals Officer