

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

In the Matter of)
)
RIKKI G. NAVARRETTE) OAH No. 22-0541-LUI
) Agency No. 22 0313 10
_____)

APPEAL DECISION

Docket Number: 22 0313 10

Hearing Date: July 11, 2022

CLAIMANT APPEARANCES:

Rikki G. Navarrette

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant, Rikki G. Navarrette, timely appealed a March 10, 2022 determination by the Division of Employment and Training Services (Division) that she left employment with her employer, Seward Community Health Center, Inc. (SCHC), without good cause. Based on that determination, the Division imposed a disqualification under AS 23.20.379(a)(1) and a benefit limitation under AS 23.20.379(c). Notice of the decision was mailed on March 11, 2022, and Ms. Navarrette appealed on March 18, 2022.

The Department of Labor referred the appeal to the Office of Administrative Hearings on June 3, 2022. Under the agreed terms of referral, an administrative law judge (ALJ) hears and decides the appeal under procedures specific to UI appeals. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on July 11, 2022. Ms. Navarrette testified at the hearing under oath. The issue presented at the hearing was whether Ms. Navarrette left her employment with SCHC for good cause.

FINDINGS OF FACT

Rikki G. Navarrette began working for SCHC on December 20, 2021. On January 27, 2022, she submitted a two-week notice, stating that she would be resigning her position because she was moving to Anchorage due to “a lack of housing, employment for my partner and exhaustion of our resources to maintain our life here in Seward.” She added in her notice that “it’s been wonderful so far for the short time I’ve been able to learn and get to know you all.” She intended her last day of work to be

February 11, 2022, but she called into work sick on February 8. She was feeling better by February 10, 2022, but she needed a negative Covid test to return to the office, which she did not yet have. The last she worked at SCHC was February 7, 2022. The Division determined that she voluntarily quit without good cause on February 8, 2022.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

AS 23.20.379(a) - Voluntary Quit, Discharge for Misconduct, and Refusal of Work

- (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...

- (c) The department shall reduce the maximum potential benefits to which an insured worker disqualified under this section would have been entitled by three times the insured worker's weekly benefit amount, excluding the allowance for dependents, or by the amount of unpaid benefits to which the insured worker is entitled, whichever is less.

BENEFIT POLICY MANUAL - Voluntary Leave (May 2003)

440-1 SEPARATION DATE

B. Point of Separation

A voluntary leaving occurs whenever:

The worker voluntarily ceases performing services for the employer

8 AAC 85.095 - Voluntary Quit, Discharge for Misconduct, and Refusal to Work

- (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).

APPLICATION


It is undisputed that Ms. Navarrette voluntarily resigned from her position with SCHC to move to Anchorage. Relocating does not constitute "good cause" to voluntarily leave work under 8 AAC 85.095(c), unless it was to accompany a spouse at a change of location as result of the spouse's employment, and commuting there would be impractical, as set forth in 8 AAC 85.095(c)(4). Although Ms. Navarrette mentioned "employment for her partner" as one of the reasons she was relocating, she did not indicate that her partner was her spouse or that she was moving to join him in Anchorage because he had a new job there. Without additional facts, the Division properly concluded that Ms. Navarrette voluntarily left her position at SCHC without good cause. The date she voluntarily left work was properly determined to be February 8, 2022, which is the first day she stopped performing services for SCHC.

This does not mean that Ms. Navarrette acted improperly. She was free to leave her job, and her reasons for leaving may have been good ones in the context of her personal needs. But the absence of “good cause” means that the employer-funded unemployment system is not obligated to pay her immediately after she chose to leave.

DECISION

The Division’s March 10, 2022 decision is **AFFIRMED**. A disqualification under AS 23.20.379(a)(2) and a benefit limitation under AS 23.20.379(c) must be imposed.

DATED July 27, 2022.


Lisa M. Toussaint
Administrative Law Judge

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.

CERTIFICATE OF SERVICE

I certify that on July 27, 2022, this document was sent to: Rikki G. Navarrette (by mail and email); Seward Community Health Center Inc. (by mail and email). A courtesy copy has been emailed to the DETS UI Appeals Team.


Office of Administrative Hearings



*Alaska Department of Labor and Workforce Development
Appeals to the Commissioner _*

Please read carefully the enclosed Appeal Tribunal decision. Any interested party (claimant or the Division of Employment and Training Services [DETS]) may request that the Commissioner accept an *appeal* against the decision (AS 23.20.430-435 and 8 AAC 85.154-155).

A Commissioner appeal must be filed within 30 days after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A Commissioner appeal must be in writing and must fully explain your reason for the appeal. You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner appeals *to the Commissioner's Hearing Officer* at the address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present *written argument* to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an *oral argument*. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

**ALASKA DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
COMMISSIONER'S HEARING OFFICER**

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