

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

In the Matter of)
)
SHERRIE R. BARLOW) OAH No. 22-0486-LUI
) Agency No. 22 0395 ER 16
_____)

APPEAL DECISION

Docket Number: 22 0395 ER 16

Hearing Date: June 29, 2022 and July 8, 2022

CLAIMANT APPEARANCES:

None

EMPLOYER APPEARANCES:

Tom Engel

CASE HISTORY

Juneau Youth Services (JYS) timely appealed a March 16, 2022 determination by the Division of Employment and Training Services (Division) that its employee Sherrie Barlow was “discharged for reasons other than misconduct.” Based on that determination, DETS declined to impose a disqualification under AS 23.20.379(a)(2) and a benefit limitation under AS 23.20.379(c). Notice of the decision was mailed on March 17, 2022, and JYS appealed on April 8, 2022.

The Department of Labor referred the appeal to the Office of Administrative Hearings on May 16, 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 June 29, 2022 and July 8, 2022. Tom Engel, who works for Vanguard HR and manages JYS’s human resource matters, testified under oath. The issue presented at hearing was whether Ms. Barlow separated from her employment with JYS under circumstances that should have triggered a benefit reduction.

FINDINGS OF FACT

Sherrie Barlow is a licensed and credentialed therapist. She was hired by JYS as a remote mental health clinician to work with troubled youth. Her supervisor was Kenia Leon, the Community Based Services Director for JYS.

Ms. Barlow was dealing with a number of challenging family issues while she was employed with JYS. On February 27, 2022, she emailed Ms. Leon and told her she

was under a great deal of stress. She was trying to find a place for her son to get residential treatment for mental health issues, her daughter had begun harming herself, and a childhood friend had recently died. She said she could see patients that week and the following Monday but needed time off after that for self-care. She asked that she be allowed to take leave without pay to go on a trip to Mexico that she had arranged prior to working for JYS, and she promised that she would “get everyone scheduled” for the week after she returned. She stated, “I just need some time away. If this is something you cannot do for me, I understand, but it is something I truly need to do. I know you need a therapist who is present and working full time right now for you. I just feel I am not myself.” She added that she had been “thinking about this all weekend” and “even thought about giving notice, because I am not my best right now” and asked for any help Ms. Leon could give her.

It appears from various emails between Ms. Barlow and Ms. Leon that the two of them talked by phone on February 28, 2022. On March 1, 2022 at 7:45 a.m., Ms. Barlow emailed Ms. Leon, stating that she needed to work and could see clients the following week and asked, “Is there anything I can do to help you out and not see clients this week?” Ms. Leon replied at 9:28 a.m., explaining that she empathized with Ms. Barlow and agreed that “doing therapy right now probably isn’t the best and healthiest choice.” She stated, “Unfortunately, our main need is someone to see clients as a primary function,” and she thanked Ms. Barlow for thinking of her clients and “making the decision to step away.” At 9:36 a.m., Ms. Barlow responded, “Here is my resignation letter, thanks for all your support and help during this time.”

The last day of work for which Ms. Barlow was paid was February 25, 2022. Mr. Engel said she had worked there less than 30 days.

At some point later, Ms. Barlow reapplied for a position with JYS, but she was not rehired. She claimed she was shocked because Ms. Leon had told her that although she had not been there long enough to take time off or qualify for LWOP, she could apply for a position later and be rehired. She also claimed that she had been asked to voluntarily resign.

Ms. Leon disputed characterization of what she told Ms. Barlow. She said that when she told Ms. Barlow she could not take LWOP for an extended time, Ms. Barlow replied that she would have to put in her notice but really needed a job. Ms. Leon replied that Ms. Barlow could always apply for a position if one were open in the future when she was ready to reenter the field. Ms. Leon stated that “[t]here was no guarantee of a position” and that JYS immediately needed to fill Ms. Barlow’s position immediately once she quit because her clients needed service.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

AS 23.20.379 states 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; or
 - (2) was discharged for misconduct in connection with the insured'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).

APPLICATION

This case turns on whether Ms. Barlow's separation from JYS is viewed as a discharge or a voluntary separation on her part. If it is viewed as a discharge, Ms. Barlow could not be assessed an AS 23.20.379 disqualification and benefit limitation because the discharge was not for "misconduct" as that term is defined by regulation.

In general, whether an employee's separation is a discharge or a voluntary leaving depends on whether the employer or the worker was the moving party in causing the separation. The Benefits Policy Manual describes the moving party as "the party who, having a choice to continue the relationship, acts to end it." Here, the record is clear that Ms. Barlow tendered her resignation from JYS on March 1, 2022. The emails in the record suggest that Ms. Barlow, having asked to take LWOP and been denied it after working for JYS for only a very short time, had the choice to either work as scheduled or resign from her position and go on vacation. She may not have liked those choices, but they were choices, nevertheless, and she chose to resign and go on vacation. Thus, to the extent she contends her resignation was not voluntary because she had no choice but to quit, that contention is incorrect. Her resignation was voluntary. This conclusion is not altered by the fact that she may have believed she would eventually be rehired if she applied for another position in the future, or that she may have ultimately regretted her decision to resign when she was not later rehired.

As for whether there was "good cause" for Ms. Barlow to voluntarily leave her work, personal stress is not one of the grounds for good cause under 8 AAC 85.095(c), and there was no evidence that any of the other grounds for good cause applies. Because Ms. Barlow did not have good cause to leave her work within the meaning of the unemployment regulation, her access to unemployment benefits is limited. Alaska law disqualifies her from benefits for an initial period and limits benefits thereafter. This means that the same disqualification that was imposed was appropriate, albeit under AS 23.20.379(a)(1) rather than AS 23.20.379(a)(2).

None of this means that Ms. Barlow 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 employer’s appeal is sustained, and the Division’s March 16, 2022, notice of determination is **REVERSED**. Ms. Barlow shall be assessed the disqualification and benefit limitation under AS 23.20.379(a) and (c) due to her voluntary resignation without good cause from JYS.

DATED July 25, 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 26, 2022, this document was sent to: Sherrie R. Barlow (by mail and email); Juneau Youth Services (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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