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

In the Matter of	)	
	)	
STEPHANIE PERKINS	)	OAH No. 22-0546-LUI
	)	Agency No. 22 0439 10

APPEAL DECISION (SEPARATION)

Docket Number: 22 0439 10

Hearing Date: July 26, 2022

CLAIMANT APPEARANCES:

Stephanie Perkins

EMPLOYER APPEARANCES:

None

CASE HISTORY

Stephanie L. Perkins was a longtime employee of Ean Services LLC prior to a separation that occurred on March 31, 2022. On April 15, 2022 the Division of Employment and Training Services (DETS) made a determination that Ms. Perkins had voluntarily left her job without good cause. Based on that finding, the determination imposed a disqualification and benefit limitation under AS 23.20.379(a) and (c). Notice of the decision was mailed on April 18, 2022. Ms. Perkins appealed the decision about ten days later.

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

After a delay caused by Ms. Perkins not receiving her mail, the matter was heard in a recorded hearing on July 26, 2022. Ms. Perkins testified under oath. The employer did not participate. The record was held open for a short time to allow Ms. Perkins to submit a recording of her conversations with her employer regarding her termination. She did this on July 27, 2022, and then resubmitted this recordings to repair a technical problem on August 29, 2022.

The issue presented at hearing was whether Ms. Perkins's employment ended under circumstances that should trigger a disqualification and benefit limitation under AS 23.20.379.

FINDINGS OF FACT

Stephanie Perkins worked for Ean Services for eight years, including the last two years as a sales executive in corporate sales. She appears to have performed well.

Prior to the Covid-19 pandemic, Ms. Perkins rarely had to travel on business for Ean Services. During the pandemic, all travel was suspended for more than a year. In the period between September 2021 and February 2022, travel began to open up again, but Ms. Perkins was not required to travel. In December 2021, she was permitted to attend a live meeting in Seattle by Teams.

In March of 2022, the company scheduled another live meeting out of state and told Ms. Perkins that it wanted her to be there in person. Ms. Perkins did not want to travel, and eventually told a company HR representative that she was refusing to travel to the meeting. She declined to travel because she did not feel it was safe to do so in light of the risk of getting Covid-19. She is not elderly and has no underlying health conditions, but her views regarding the risk are sincerely held. She has been consistent in this area, also electing not to engage in any personal air travel.

In connection with her refusal to travel in March 2022, Ms. Perkins had a series of conversations with HR, which she recorded. I have listened carefully to these recordings. The consequence of refusing to travel were initially somewhat uncertain, but by the end of the process it was very clear. Ms. Perkins would receive a "final warning" for the refusal. This would mean that if she again refused to travel on this basis, she would be terminated. The next request to travel would not occur until "summer," that is, two to four months in the future.

Ms. Perkins, for her part, was not certain that her views on travel safety would never change. However, it seemed likely that she would refuse travel if it were requested in the next few months.

Ms. Perkins has characterized the tone of the HR conversations as "bullying." I reject this characterization. Ean Services engaged in a dialogue with Ms. Perkins to explore her position and the options that flowed from it. Both Ms. Perkins and the HR representative were highly professional in this interaction, and they made genuine progress in understanding each other's perspectives and the options on the table.

At the end of the discussions, Ms. Perkins elected to submit a voluntary resignation that would be effective in two weeks, rather than continue working into the summer subject to the warning. Ean Services agreed to pay her a severance package equal to half what it would have paid if it had laid

her off. Notably, the severance package probably would not have been available had Ms. Perkins simply carried on working while looking for work elsewhere, and then resigned to take the replacement job; HR clearly explained that severance is not available in that situation. Thus, there was some financial logic to closing out the employment immediately and taking the severance package.

The job with Ean Services ended on March 31, 2022 in accordance with Ms. Perkins's notice. As the severance was paid out over the ensuing weeks, Ms. Perkins reported it to DETS as income. Eventually it ran out and, as of the date of the hearing in late July, Ms. Perkins had not found alterative employment.

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

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).

(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....

APPLICATION

The starting point for analyzing this separation is whether Ms. Perkins quit her employment with Ean Services or whether she was discharged. The grounds for disqualification from UI benefits are different for discharges than they are for voluntary quits. The Division's Benefit Policy Manual states:

> Whether a separation is considered a discharge or a voluntary leaving depends on whether the employer or the worker was the moving party in causing the separation. The moving party in this sense is not necessarily the party who initiated the chain of events leading to the separation. Rather it is the party which, having a choice to continue the relationship, acts to end it, thus withdrawing any choice from the other party. . . . A party who has no choice in continuing the employment relationship cannot be the moving party.[1]

In this case, Ms. Perkins suggests that the employer's "bullying" left her with no practical choice but to resign. The reality, however, is that even if her reluctance to travel was justified, she had a real option to continue working for at least two or three more months, and perhaps more. She is the one who chose to end the job right away, perhaps influenced by the financial incentive she was offered.

The unemployment laws do not require that an option to continue employment be indefinite in order to be considered a true option to keep working. By stepping away from a chance to keep working for a period of months, Ms. Perkins was the one who opted to end the employment relationship.

Viewed as a voluntary quit, this resignation necessitates a reduction in benefits unless the claimant can prove that she fits within one of the enumerated good cause categories. This separation, however, does not fit within any of the criteria that would permit Ms. Perkins to receive unrestricted benefits. Safety conditions—such as work-associated risk—can qualify as "good cause" to resign under 8 AAC 85.095(c)(3), but these conditions only qualify if the employee had "no other reasonable alternative but to leave work." Ms. Perkins did have at least two alternatives: to continue working, while still refusing to travel, for at least two more months; and to find a way, with hospital-grade PPE or otherwise, to travel with a level of risk she would find acceptable.

DECISION

The employee's appeal is not sustained. The Division's April 15, 2022 decision is **AFFIRMED**.

DATED August 30, 2022.

Christopher Kennedy
Administrative Law Judge

1 BPM at VL 135.05-3.

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 August 30, 2022, this document was sent to: Stephanie L. Perkins (by mail and email); Ean Services LLC (by mail); DETS UI Appeals Team (by email).

[redacted]
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
P.O. BOX 115509 JUNEAU ALASKA 99811-5509
Phone: (800) 232-4762 E-mail: appeals@alaska.gov Fax: (907)465-3374