



## APPEAL TRIBUNAL DECISION

**Docket number:** 23 0238    **Hearing date:** April 20, 2023

### CLAIMANT:

SANDRA LOWRIE  
[REDACTED]  
[REDACTED]

### EMPLOYER:

ALASKA FAMILY CARE ASSOC LLC  
[REDACTED]  
[REDACTED]

### CLAIMANT APPEARANCES:

Sandra Lowrie

### EMPLOYER APPEARANCES:

Laurie Clark  
Loretta Lee

## CASE HISTORY

The employer timely appealed a March 22, 2023 determination which allowed the claimant's benefits with no penalty 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 April 4, 2022. The claimant last worked on January 27, 2023. At that time, the claimant worked full time as a practice manager.

The claimant's last day of work in the office was January 23, 2023, which was stressful because two employees had quit with short notice and one had sabotaged the office. The claimant worked from home due to weather on January 24, 2023, and called out sick January 25 and 26, 2023. On Saturday, January 28, 2023, the claimant sent a text message to the owner, stating that she knew it was a bad time, but she needed to take some time off to get her mental and physical health under control. The claimant stated she would understand if the employer needed to replace her because she was not able to do her job. The owner understood the message to mean the claimant was giving notice to quit the work. The employer tried to call the claimant after receiving the text, but the

claimant did not answer. The claimant was suffering from physical and mental issues and the clinic owner was her primary care physician, so she was aware the claimant was struggling with medical issues. The claimant's mental health had deteriorated to an extreme point and she decided to seek specialized care. The claimant did not recall that the owner called her, but she recalled that she was unable to take phone calls at the time because of her increased anxiety.

The next day, the owner sent a text message to the claimant letting her know that she had let the other providers in the clinic know the claimant was leaving, but she wanted to let the claimant advise the staff she supervised that she was leaving and when the transition to a new manager would be. The claimant believed the employer had decided to replace her, which she understood, as the clinic was busy and short-staffed, so she sent a goodbye message to staff. On Monday, January 30, 2023, the claimant sent a message to the owner to clarify that she had not intended to resign in her text on Saturday. The owner contacted the claimant that day about passwords and other work-related questions, but did not reply to the claimant about the circumstances of her separation. The owner believed the claimant had in fact quit but had then sent the clarifying message because the claimant was concerned how quitting would affect her unemployment benefits.

### **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**

The first matter before the Tribunal is whether the claimant voluntarily quit work or if she was discharged. A discharge is "a separation from work in which the employer takes the action which results in the separation, and the worker does not have the choice of remaining in employment." 8 AAC 85.010(20). Voluntary leaving means a separation from work in which the worker takes the action which results in the separation, and the worker does have the choice of remaining in employment. Swarm, Com. Dec. 87H-UI-265, September 29, 1987. Alden, Com. Dec. 85H-UI-320, January 17, 1986.

The Tribunal finds the employer took the action that ended the employment relationship when she told the providers the claimant was leaving and told the claimant to let her staff know there would be a transition. The claimant's text did not state any intention to quit the work, although the claimant did state that she understood if the employer needed to replace her. This left the choice to end the employment relationship in the employer's hands, and the owner chose to replace the claimant. The Tribunal finds the separation is a discharge, so will consider if the discharge was for misconduct.

The claimant was discharged after requesting time off to deal with medical issues. Although the timing was bad for the employer with two staff leaving recently and having office sabotage to deal with, the claimant's request was not a willful disregard of the employer's interests and is not misconduct. The Tribunal finds the claimant was discharged for reasons other than misconduct. The penalties of AS 23.20.379 are not appropriate in this case.

### **DECISION**

The determination issued on March 22, 2023 is **AFFIRMED**. Benefits are **ALLOWED** for the weeks ending February 4, 2023 through March 11, 2023, if otherwise eligible. The three weeks are restored to the claimant's maximum benefits. The determination will not interfere with the claimant's eligibility 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 April 25, 2023.



Rhonda Bunes, Appeals Officer