



## APPEAL TRIBUNAL DECISION

**Docket number:** 23 0416    **Hearing date:** July 20, 2023

**CLAIMANT:**

OPHELIA TREYBAL  
[REDACTED]  
[REDACTED]

**EMPLOYER:**

TANANA ADVENTURE SPORTS LLC  
[REDACTED]  
[REDACTED]

**CLAIMANT APPEARANCES:**

Ophelia Treyball

**EMPLOYER APPEARANCES:**

None

### CASE HISTORY

The claimant timely appealed a May 11, 2023 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 or was discharged for misconduct connected with the work.

### FINDINGS OF FACT

The claimant began work for the employer on January 14, 2022. She last worked on April 21, 2023. At that time, she worked full time as a shipping and receiving clerk.

The claimant provided the employer with 30-days advance notice that April 22, 2023 would be her last day because she was planning to relocate. The claimant decided to give notice because on March 18, 2023 the claimant's manager had yelled at the claimant while standing very close to her after he had prevented another employee from assisting the claimant to move some freight. The claimant and the manager did not get along and the claimant felt the manager made the workplace toxic by acting unprofessionally, such as yelling at her.

A few days after she resigned, the claimant approached the owner and asked to change her last day to May 15, 2023, so she could continue to work and wait to relocate after her child finished the school term. The owner said it would be up to the manager, then later told the claimant the employer would stick with the claimant's original resignation date. The claimant worked through April 21, 2023, but called in sick on the last day because both she and her child were sick.

## 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 whether 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 policy of the Employment Security Division has long been that, if a worker establishes a resignation date, a subsequent unapproved request to withdraw the resignation does not alter the nature of the separation. It remains a voluntary quit. The worker's resignation terminates the employment

relationship on the effective date of the resignation. The retraction of the resignation constitutes a new offer of services which the employer has the right to accept or reject. The Tribunal finds this is the case here. The claimant took the action that ended the employment relationship when she set her resignation date, so the separation is a voluntarily leaving.

The Division's Benefit Policy Manual, VL 210 Good Cause addresses claimants who attempt to rescind a resignation as it relates to pursuing reasonable alternatives to leaving work:

### *C. Reasonable Alternatives*

*The other essential element of the definition of good cause is the requirement that the worker exhaust all reasonable alternatives before leaving work. A reasonable and prudent worker sincerely interested in remaining at work attempts to correct any condition or circumstance that interferes with continued employment. However, a worker is not expected to do something futile or useless in order to establish good cause for leaving employment.*

*It is clear that if a worker resigns and then attempts to rescind the resignation, either directly or through a grievance procedure, the worker has by that action shown that all reasonable alternatives were not exhausted before the worker quit (9427683, August 5, 1994.)*

*Example: A claimant resigned from his job due to personality conflicts with his co-workers that, he felt, exacerbated a medical condition he had. He later attempted to delay his termination for six months, but the employer refused to do so. In upholding the Tribunal's denial of benefits, the Commissioner held, "Had the working conditions been so onerous as to leave the claimant no alternative but to quit, we do not believe he would have attempted to stay working under those same conditions an additional six months." (Lauster Com. Dec.98 2633, March 8, 1999)*

The claimant in this case requested to work nearly a month past her resignation date, which, as in Lauster, indicates that the working conditions were not so severe as to provide the claimant with good cause to leave suitable work.

*A worker has good cause for voluntarily leaving work because of a supervisor's actions only if the supervisor follows a course of conduct amounting to hostility, abuse, or unreasonable discrimination. In addition, the worker must make a reasonable attempt to resolve the matter prior to leaving work. Griffith, Com. Dec. 8822158, December 20, 1988, *aff'd Griffith v. State Department of Labor*, Alaska Superior Court, No. 4FA-89-0120 Civil, September 25, 1989.*

The claimant did not establish that the manager's actions rose to the level of hostility, abuse or unreasonable discrimination that would give her good cause to leave work, and her request to extend her resignation date demonstrates reasonable alternates were not exhausted before voluntarily leaving work. The Tribunal cannot conclude that the claimant had good cause to leave suitable work, so the penalties of AS 23.20.379 are appropriate in this case.

### **DECISION**

The determination issued on May 11, 2023 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending April 29, 2023 through June 3, 2023. 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 July 25, 2023.



Rhonda Bunes, Appeals Officer