



APPEAL TRIBUNAL DECISION

Docket number: 23 0417 **Hearing date:** July 14, 2023

CLAIMANT:

STEVEN WALSTER
[REDACTED]
[REDACTED]

EMPLOYER:

TICO SERVICES INC
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Steven Walster

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a May 25, 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.

FINDINGS OF FACT

The claimant began work for the employer in 2017. He last worked on May 20, 2023. At that time, he worked full time as a flooring installer.

The claimant had surgery and missed work which caused him to get behind on his rent and he was evicted. Following his eviction, the claimant gave the employer two-weeks notice that was leaving the work to relocate out of the state. The claimant felt the work was draining after he had surgery and the money situation was stressful so he decided to move and stay with family.

The claimant stayed in a long-term hotel while he worked out his two weeks notice period, which cost him \$850. The claimant held that he could not stay in Alaska because he could not find a comparable living arrangement to the one he had before he was evicted, which was \$650 per month with a \$100 deposit. The claimant was paid \$18 per hour and he held that he was only working about 32 hours per week at the time he left the work because the winter season is slow in the floor installation business. His gross monthly earnings at that rate would be \$2,304. The claimant's only expenses besides housing were about \$300 for food per month and \$20 per month for gas in a company truck he was allowed to drive

home and to work, and he had a hospital bill he would be making payments on starting soon.

The claimant departed Alaska after he finished work on May 20, 2023.

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....

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).

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 claimant in this case voluntarily quit suitable work because he lost his housing and could not find other affordable housing right away.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. The claimant in this matter did not leave work for one of the allowable reasons.

The Division's Benefit Policy Manual, Voluntary Leave, Personal Circumstances, 155.2 Home, Spouse, or Children in Another Location, holds:

A. Employment of Spouse

To establish good cause when quitting work to accompany or join a spouse at a new location, it must be shown:

- *The spouse has accepted new work, been transferred by his employer, or discharged by the military;*
- *It is impractical to commute from the new location;*
- *The move is in a timely manner in relation to leaving work.*

Good cause can be established if the worker's spouse accepts new work, is transferred by a current employer including the military, or is discharged by the military to a new location from which it is impractical to

commute. Local commuting patterns should be considered when determining if the move is necessary.

Example: The discharge of a worker's military spouse or the transfer from one duty station to another under the direction of military orders gives the worker good cause for voluntarily leaving work, as long as the move is timely (9224967, September 4, 1992.)

B. Other Reasons to Move

Under the regulation, other reasons to move do not provide the claimant with good cause to quit. These other reasons may include housing difficulties, to move with a spouse who is attending school, to maintain the family unit, or to improve the family circumstances.

Example: In denying benefits to a claimant who quit to follow his wife to where she was attending school, the Commissioner held, " If the claimant had quit his job to attend academic instruction in another state, it would not be deemed a compelling reason. . . . Likewise, his wife's decision to move to another state on a temporary basis to further her education cannot be considered a compelling reason for the claimant to quit his job." (96 2132, December 12, 1996)

The claimant did not quit work for a reason allowed under the regulation. The claimant did not establish that the work was not suitable for him. This leaves the Tribunal to consider other factors that would influence a reasonably prudent person in the claimant's circumstances.

In Missall, Com. Dec. 8924740, April 17, 1990, the Commissioner of Labor summarized Department policy regarding what constitutes good cause for voluntarily leaving work. The Commissioner held, in part:

The basic definition of good cause is 'circumstances so compelling in nature as to leave the individual no reasonable alternative.' (Cite omitted.) A compelling circumstance is one 'such that the reasonable and prudent person would be justified in quitting his job under similar circumstances.' (Cite omitted). Therefore, the definition of good cause contains two elements; the reason for the quit must be compelling, and the worker must exhaust all reasonable alternatives before quitting.

The claimant left just as his work schedule would likely be increasing back to 40 hours per week, May 20, 2023 no longer being the winter season in Alaska. The claimant's earnings at 32 hours per week were just enough to cover his

expenses while staying in the hotel, so it was not established that the claimant was unable to afford to stay in Alaska and continue working while locating another place to live.

Considering Missall and the Division's Benefit Policy Manual, the Tribunal cannot find that the claimant left work for a reason that can be considered good cause under regulation 8 AAC 85.095. The penalties of AS 23.20.379 are appropriate in this case.

DECISION

The determination issued on May 25, 2023 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending April 29, 2023 through June 3, 2023. The three weeks remain 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 26, 2023.



Rhonda Bunes, Appeals Officer