



APPEAL TRIBUNAL DECISION

Docket number: 23 0460 **Hearing date:** August 8, 2023

CLAIMANT:

LEONCIO PENA
[REDACTED]
[REDACTED]

EMPLOYER:

RNDC SHARED SERVICES LLC
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Leoncio Pena

EMPLOYER APPEARANCES:

Jennifer Grenwald

CASE HISTORY

The claimant timely appealed a June 22, 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 on August 28, 2003. He last worked on February 23, 2023. At that time, he worked full-time as a custodian.

The claimant was off work with approval on February 24, 2023 to care for his wife who was having surgery. The claimant was approved to be off work February 25, 2023 through March 25, 2023. The claimant traveled to Santa Dominica to visit his elderly mother. On his arrival, the claimant found his mother to be in poor health due to several medical conditions and he took her to the emergency room via ambulance. The claimant accompanied his mother while she received tests and returned for follow up care. The claimant was required to provide full assistance to his mother at home with her medications, medical appointments and all activities of daily living such as bathing, eating and getting to the bathroom. The claimant found his mother was in no shape for him to leave when it was time to return, so he extended his trip to continue providing care for his mother.

The claimant made one attempt to call the employer to let them know he could not return to work on March 27, 2023 as scheduled, but his call did not go through and he did not try again because he was preoccupied with his mother's health.

The employer attempted to contact the claimant and requested a welfare check be performed. On April 14, 2023, the employer issued a letter advising the claimant he was considered to have voluntarily quit the work. The claimant returned to Alaska in early June 2023, his mother's health having improved enough for him to leave her in the care of others.

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 left suitable work to provide care for his mother who was ill and at least temporarily disabled.

In Gilheany, Com. Dec. 84H-UI-348, April 26, 1985, the Commissioner of Labor denied the Division's request that he reopen his March 29, 1985, decision that ruled the Division must adhere to the language of statutes and regulations (see Gilheany cited above). The Commissioner ruled that if the Division wished to change Department policy "the regulation should be amended accordingly."

Alaska Statute 23.20.455 holds that decisions issued by the Commissioner of Labor and Workforce Development form binding precedents upon the Appeal Tribunal.

Regulation 8 AAC 85.095(c)(2) holds that a claimant may have good cause for voluntarily leaving work when they do so "to care for an immediate family member who has a disability or illness." The claimant in this case established that his mother required his care on at least a temporary basis. The regulation does not state that a claimant must have no other reasonable alternative but to leave work. Because that requirement is not stated when it is clearly stated in

other provisions in the same section, The Tribunal cannot find that the claimant negated his good cause to leave work by failing to pursue protection of his job by requesting a leave of absence.

The Tribunal must conclude the claimant had good cause to voluntarily leave work at the time he did. The penalties of 23.20.379 are not appropriate.

DECISION

The determination issued on June 22, 2023 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending March 4, 2023 through April 8, 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 August 11, 2023.



Rhonda Bunes, Appeals Officer