



APPEAL TRIBUNAL DECISION

Docket number: 23 0473 **Hearing date:** August 9, 2023

CLAIMANT:

CHARDONNAI NELSON
[REDACTED]
[REDACTED]

EMPLOYER:

SLEEP COMFORT BY NERLANDS
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Chardonnai Nelson

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a June 29, 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 October 3, 2021. She last worked on May 5, 2023. At that time, she worked full-time as a sales associate.

The claimant had problems working with another sales associate. The coworker had outbursts at work, called the claimant dumb, and was generally difficult to work with. The owner had counseled the co-worker for her behaviors, but gave her many chances.

On April 28, 2023, the co-worker came in late and made a rude comment when the claimant mentioned that she had an appointment in the afternoon. The claimant later heard the coworker slamming things around at her desk. The co-worker then walked past the claimant's desk outside the building made a rude gesture at the claimant through the window. The claimant did not know what prompted the gesture, but she decided she'd had enough. The claimant sent a text message to the owner, who was out of town, and advised him what had happened and gave two weeks notice that she was resigning effective May 12, 2023.

The owner contacted the claimant and told her the coworker had resigned and the owner was not giving her further chances. The claimant decided it was too late, the employer had failed to protect her from the co-worker's behavior and she was not really sure the owner would not give the coworker another chance.

The claimant contacted the owner after May 5, 2023 to let them know she would not work the second week of the notice period because her child had a fever and could not go to daycare until she had been 24 hours without fever. The claimant knew her child would continue to have a fever until she had scheduled dental surgery for an infection. Pre-surgery appointments were scheduled that week and the claimant would miss work for them anyway so she decided to resign early.

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

Alaska Statute 23.20.379 requires the Division to examine the reason an unemployment insurance benefit claimant has become unemployed and determine if penalties spelled out in the statute should be applied. The claimant in this case initially gave notice to resign because of the incident with her co-worker, and then left the work a week earlier than planned because of her daughter's fever and lack of childcare.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. Including leaving working due to working conditions, if the claimant has no reasonable alternative but to leave the work.

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 in this case gave notice that she was quitting after a rude gesture from a coworker whose behavior was frequently unprofessional. While the coworker's behavior was inappropriate, the coworker had quit at that point and the owner said the co-worker would get no more chances. The Tribunal does not find the claimant had a compelling reason for leaving work because her co-worker, who was the problem, had quit.

The Tribunal determined the claimant quit work because of her daughter's dental surgery appointments, but the claimant denied that was a reason she would quit work. The Tribunal agrees. The claimant changed her resignation date because of her daughter's needs, but only because she had already resigned. Regardless, the Tribunal does not find that either reason for leaving work is a compelling reason.

The Tribunal finds the claimant voluntarily left suitable work without good cause. The penalties of AS 23.20.379 are appropriate.


DECISION

The determination issued on June 29, 2023 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending May 13, 2023 through June 17, 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 August 21, 2023.


Rhonda Bunes, Appeals Officer