



## APPEAL TRIBUNAL DECISION

**Docket number:** 23 0479      **Hearing date:** August 15, 2023

**CLAIMANT:**

LOIS DUVALL  
[REDACTED]  
[REDACTED]

**EMPLOYER:**

HEARTS & HANDS OF CARE INC  
[REDACTED]  
[REDACTED]

**CLAIMANT APPEARANCES:**

Lois Duvall

**EMPLOYER APPEARANCES:**

None

### CASE HISTORY

The claimant timely appealed a June 21, 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 January 2009. She last worked on May 26, 2023. At that time, she worked full-time as a caregiver for her adult daughter who experiences a disability.

The claimant's daughter's health was declining and she was gaining weight, which made it very difficult for the claimant to get her daughter out of bed and into her wheelchair or into the bath. The claimant used a lifting mechanism to assist with lifting her daughter, but it did not work well. The claimant's employer was short-staffed and could seldom send any workers to help the claimant. No other personal care was available for the claimant except a day-habilitation program of the employer's which the daughter refused to attend. The claimant had no family nearby to assist.

After visiting her family, the claimant decided to relocate to be near her son and daughter-in-law for assistance with her daughter's care, with the approval of her daughter's medical care providers. The daughter's medical providers felt a warmer climate would also improve the claimant's health due to medical issues she has with cold weather. The claimant relocated to her son's home in Oregon.

## 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 Division determined the claimant in this case voluntarily quit work.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work, including leaving work to provide care for an immediate family member who has a disability or illness. The claimant in this case left work to relocate with her daughter to improve her daughter's health and obtain a better level of care with more persons available to provide care.

*Good cause for leaving work depends on whether a reasonable and prudent person would be justified in quitting the job under similar circumstances. Koach v. Employment Division, 549 P.2d 1301 (Or., 1976). The cause must be one which would reasonably impel the average able-bodied worker to give up his or her employment; mere dissatisfaction with the circumstances which are not shown to be abnormal or do not affect health does not constitute good cause for leaving work voluntarily. Mueller v. Harry Lee Motors, 334 So.2d 67 (Fla., 1976); Associated Utility Services, Inc. v. Board of Review, Dept. of Labor and Industry, 331 A.2d 39 (N.J., 1974), cited in Roderick v. ESD, Alaska Super. Ct., 1st J.D., No. 77-782, April 4, 1978, affirmed without comment Alaska Supreme Ct., No. 4094, March 30, 1979.*

The claimant in this case has a legal and moral responsibility to provide care for her daughter who is disabled and the claimant's decision to relocate was made with her daughter's medical providers with the intent of providing improved care for her daughter. The Tribunal finds the claimant's actions are those of a reasonable and prudent person and the claimant has established she had good cause to leave work under regulation 8 AAC 85.095(c)(2).

The Tribunal finds the claimant had good cause to leave work at the time she did. The penalties of AS 23.20.379 are appropriate.


### **DECISION**

The determination issued on June 21, 2023 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending June 3, 2023 through July 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 22, 2023.

  
Rhonda Bunes, Appeals Officer