



APPEAL TRIBUNAL DECISION

Docket number: 23 0521 **Hearing date:** September 20, 2023

CLAIMANT:

NICOLE BRAATZ
[REDACTED]

EMPLOYER:

HOPE COMMUNITY RESOURCES INC
[REDACTED]

CLAIMANT APPEARANCES:

Nicole Braatz

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a July 10, 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 February 20, 2022. She last worked on June 7, 2023. At that time, she worked full time as a live-in caregiver.

The claimant was feeling sick sick for the last three days of her rotational shift, but she was encouraged by her supervisor to continue working. The claimant was still sick with flu-like symptoms on the first day of her next rotation on June 14, 2023 so she contacted the employer. The claimant was advised she would need to get a doctor's note to return. The claimant was seen at an urgent care center. The claimant no longer had a fever, but she had a continued cough. The doctor gave the claimant a note saying she could return to work when she was no longer sick. The claimant's supervisor would not accept the note on June 15, 2023 because it did not have a return to work date. The claimant returned to the urgent care because her own doctor was still not available. The doctor refused to give the claimant a return to work date because of her cough. The claimant is a smoker and has asthma, and she frequently coughs for long periods after a respiratory illness. The claimant believed her primary care doctor would have permitted her to return to work, but she was unable to get an appointment. The claimant was advised the rest of her 8-day rotation was covered.

The claimant contacted her supervisor about returning to work on the rotation beginning June 20, 2023, as her co-worker had just worked two rotations. The claimant's supervisor advised her that she no longer had a job. The claimant was not permitted to return to the worksite and the employer brought the claimant's personal items to the office for her to pick up.

Documents in the record show the claimant told a Division representative that she voluntarily quit the work because the pay was too low. Although she was dissatisfied with her wages, the claimant denied that she told the representative that this was the reason the work ended and the claimant held she would have continued to work until she found another job if her supervisor had allowed her to return.

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 claimant attempted to return to work on June 15, 2023 and was told she had to get a doctor's note with a return to work date. She attempted to return to work on June 20, 2023 and was advised that she no longer had a job. The Tribunal concludes the employer took the action that ended the employment relationship when the claimant was advised she no longer had a job, and will consider if the discharge was for work related misconduct.

A Hearing Officer must base his decision on a "preponderance of evidence." See e.g. Patterson, Comm'r Dec. 86H-UI-233, 1C Unemp. Ins. Rptr. (CCH), AK ¶8121.28, 10/16/86. "Preponderance of evidence" has been defined as "that evidence which, when fairly considered, produces the stronger impression, and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto." Adelman, Comm'r. Dec. 86H-UI-041, 1C Unemp. Ins. Rptr. (CCH), AK ¶8121.25, 5/10/86, citing S. Yamamoto v. Puget Sound Lumber Co., 146 P. 861, 863 (WA).

The preponderance of the evidence indicates the claimant was discharged when she did not provide a doctor's note with a return to work date. The claimant tried to provide such a note, but was unable to do so before the employer advised her she was discharged. It has not been established that the claimant's actions were a willful disregard of the employer's interests as described in regulation 8AAC 85.095(d).

The Tribunal finds the claimant was discharged for reasons other than misconduct related to the works. The penalties of AS 23.20.379 are not appropriate.

DECISION

The determination issued on July 10, 2023 is **REVERSED**. Benefits are **ALLOWED** UNDER as 23.20.379(a)(2) for the weeks ending June 17, 2023 through July 22, 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 September 25, 2023.



Rhonda Bunes, Appeals Officer