



APPEAL TRIBUNAL DECISION

Docket number: 23 0531 **Hearing date:** September 12, 2023

CLAIMANT:

DANIEL TORRENCE
[REDACTED]

EMPLOYER:

HAMMER & WIKAN INC
[REDACTED]

CLAIMANT APPEARANCES:

Daniel Torrence

EMPLOYER APPEARANCES:

Jim Floyd

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 his most recent period of work for the employer in 2007. He last worked on June 6, 2023. At that time, he worked full-time as a meat cutter.

The claimant was dissatisfied with his job for many reasons, some stemming from years prior. Most recently, the claimant felt he was not being compensated properly for training a new meat cutter that started in October 2022. In mid-May 2023, the claimant brought his concerns to the general manager and expressed that perhaps his annual bonus could be adjusted to compensate for the training. The general manager advised the claimant that bonus amounts were set by the employer in December 2022 for that year's work. The manager told the claimant he would raise his hourly wage from \$18.85 to \$19.50 effective May 1, 2023. The claimant asked the manager what good that would do. The employer held that hourly rate for a union journeyman meat cutter is \$12.70 in the employer's union agreement.

On June 6, 2023, the claimant received a bonus in the amount of \$450, a \$50 increase from the previous year. The claimant decided the additional bonus amount was not satisfactory for the extra work he had been doing, so he left a letter of resignation effective immediately at the end of his shift.

The claimant held that other factors contributed to his decision to leave the work including the fact that he was required to work excessive overtime to complete his duties. The employer's records showed that the claimant worked 71 hours of overtime in 2023, or about 3.5 hours of overtime per week. The claimant was paid for all overtime worked. The claimant also held that he was not allowed any breaks on days when a sale made the meat department extra busy. The claimant did not bring his concerns about breaks to the general manager, the human resources office or his union. The general manager recalled eating an employer-furnished lunch with the claimant on a sale day, when the claimant told the manager he did not have time for a break, but he did not frame it as a complaint.

The claimant believed his direct supervisor in the meat department caused hostile working conditions. The claimant recounted two instances, one of which occurred in 2022 and another which occurred in approximately April 2023, where his supervisor yelled at him in front of customers when customer orders were not ready, due to errors that were not the claimant's fault. The claimant provided text messages between himself and his supervisor and held that he felt harassed by a message that told the claimant, "You need to answer your phone so we can figure out when you are going to be able to come to work or call me." The claimant provided many texts from his supervisor, about working hours and arrival times, but upon examination, none appear overtly harassing or threatening. The claimant felt his supervisor was harassing him by contacting him on his personal phone on his time off.

The claimant did not bring his concerns about his supervisor to the general manager, to the employer's human resources office or to his union representatives because he believed that nothing would be done and he might be further intimidated by his supervisor if he complained to the union. The general manager recalled that while he was aware the claimant and his supervisor did not get along well, he was not aware of any open hostility or that the claimant felt he was mistreated. The manager held that he made it a point to frequently ask the claimant how things were going with him during the manager's 3.5 years in that position, and the claimant never brought up concerns with his supervisor's treatment of him.

The claimant felt stressed by his working conditions and he believed the stress affected his health, causing him to feel fatigued. The claimant did not consult a health care provider about his stress symptoms before decided to leave work.

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. Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. The claimant left the work because he was unsatisfied with the working conditions.

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 did not establish that the circumstances under which he was working were unusual or that his treatment by his supervisor rose to the level of unreasonable abuse or discrimination. The claimant was paid far above the union scale for his position and was compensated for all overtime, which was not excessive. The claimant failed to pursue the reasonable alternatives of bringing his concerns with the working conditions to the general manager, the employer's human resources office or to his union. The claimant did not establish that he had a reasonable belief he would be harassed if he had pursued any of those alternatives available to him. The claimant had approached the general manager about his dissatisfaction with his pay, and this resulted in an hourly raise.

The Tribunal concludes that the claimant did not have good cause to voluntarily leave work at the time he did. 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 June 17, 2023 through July 22, 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 September 15, 2023.



Rhonda Bunes, Appeals Officer