



## APPEAL TRIBUNAL DECISION

**Docket number:** 23 0476      **Hearing date:** August 14, 2023

**CLAIMANT:**

BARBARA ADAMS  
[REDACTED]  
[REDACTED]  
[REDACTED]

**EMPLOYER:**

MAT-SU TITLE AGENCY LLC  
[REDACTED]  
[REDACTED]

**CLAIMANT APPEARANCES:**

Brabara Adams

**EMPLOYER APPEARANCES:**

Heather Spears-Morris

### CASE HISTORY

The claimant timely appealed a July 6, 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 May 3, 2023. She last worked on June 7, 2023. At that time, she worked full-time as an escrow assistant.

On her last day of work, the claimant was playing music on a speaker in her cubicle. A coworker who was an escrow closer with an office nearby came out and asked the claimant to turn her music off twice. The second time, the claimant said no, her music was fine. The claimant noted that other workers played music and the claimant believed the closer could just shut her office door.

The closer went to the office manager and complained, and the claimant was called into a meeting with the office manager. The manager reprimanded the claimant for her actions and told the claimant she was "walking a fine line" as she was still on probation and had missed work due to illness and car problems. The manager told the claimant she would get used to the escrow closer's personality and stated that the closer was needed by the employer. The claimant told the manager that she took this to mean that the claimant was not needed by the employer and she went to her desk and began packing her personal items. The manager saw the claimant packing and told her to turn in her keys before she left.

## 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 issue before the Tribunal is whether the claimant voluntarily quit suitable 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 held that the office manager discharged her when she told her that the closer was needed by the employer, implying that the claimant was not needed. She led that the office manager could have asked her to stay when she

say the claimant packing, but she just asked for the employer's keys. The Tribunal does not agree. The claimant did not establish that the employer stated a desire to end the claimant's employment and the manager's failure to talk the claimant out of leaving does not establish that the employer took any action to end the employment relationship. The claimant took the action that ended the relationship when she packed up her desk with the intention to leave the work. The separation is a voluntarily leaving, so the Tribunal will consider if the claimant had good cause to leave the work.

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.

*It is the employer's right to establish the methods and quality of work.  
Stevens, Comm'r Dec. 84H-UI-324, February 22, 1985.*

The employer in this case had the right to reprimand the claimant for her actions in telling a co-worker she would not turn off her music, as it is the employer's responsibility to mediate such matters between workers. That the employer stated that the other employee was valued for their skills and experience does not give the claimant good cause to leave the work.

The Tribunal concludes the claimant in this case voluntarily quit suitable work without good cause. The penalties of AS 23.20.379 are appropriate.

### **DECISION**

The determination issued on July 6, 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 August 17, 2023.

*Rhonda Bunes*  
Rhonda Bunes, Appeals Officer



## **Alaska Department of Labor and Workforce Development Instructions for Appeals to the Commissioner And Reopen Requests**

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Please read carefully the enclosed Appeal Tribunal decision. Any Interested party (claimant, employer, or the Division of Employment and Training Services [DETS]) may request that the **Commissioner accept an appeal** against the decision (AS 23.20.430-435 and 8 AAC 85.154-155). Interested parties who failed to attend a hearing may request that the Appeal Tribunal **reopen** the hearing (AS 23.20.420 and 8 AAC 85.153(f)).

A **Commissioner appeal must be filed within 30 days** after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A **Commissioner appeal must be in writing and must fully explain your reason for the appeal.** You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner Appeals to the Commissioner's Hearing Officer at the mailing address or email address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present written argument to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an oral argument. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

A party who failed to participate in a hearing may **request reopening** of the Appeal Tribunal hearing. The reopening request **must be made in writing**. The request must be delivered or mailed to the assigned hearing officer **within ten days after the close of the hearing**. Reopening may be granted if circumstances beyond the party's control prevented the party from participating in the hearing. Send reopening requests to the Appeal Tribunal address shown on the hearing officer's decision or to the email address listed below.

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**ALASKA DEPARTMENT OF LABOR  
AND WORKFORCE DEVELOPMENT  
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