



APPEAL TRIBUNAL DECISION

Docket number: 23 0588 **Hearing date:** November 3, 2023

CLAIMANT:

JAMI MCCUMBER
[REDACTED]

EMPLOYER:

KLONDIKE KIDS LLC
[REDACTED]

CLAIMANT APPEARANCES:

Jami McCumber

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed an August 2, 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 October 2021. She last worked on June 16, 2023. At that time, she worked full-time as a director.

On June 16, 2023, a parent asked the claimant about marks on their child's neck from the previous day. At the same time, a worker arrived and altered the claimant to an incident they had observed the previous afternoon. The worker had been called away to take her own child to the emergency room before she could report the incident to the claimant the previous day. The worker told the claimant she observed another worker improperly restrain the child in a manner which would have resulted in the marks observed on the child.

The director instructed another worker to take pictures of the child's injuries and she sent them to the co-owners of the facility, who were located out of state, along with a report of what she was told the worker and others had observed. One of the co-owners told the claimant she did not believe the worker had taken the actions that were described and accused the claimant of making up the entire incident. The owner told the claimant she should not have taken pictures of the child's injuries and accused the claimant of lying because she "had it out for" the worker who

had allegedly caused the injury. The claimant had previously had negative interactions with that worker and the employer had defended the worker.

The claimant believed that based on their statements, the owners would not report the child injury incident as required by State law and would take no action to discipline the worker. The owners had handled all such reporting in the past and the claimant was not authorized to make such contacts on the employer's behalf. The claimant is mandated by the State to report suspected abuse. The claimant told the employer she would be leaving the work for that reason. The claimant then advised the child's parents what had taken place and the parent decided to report the matter to the police. The claimant called the appropriate State licensing agency and reported the incident, then she took her personal belongings and left the facility.

Documents in the record show the employer reported to the Division that the claimant had quit to start a childcare facility with her daughter. The claimant denied that she had planned to start a childcare facility and held that she did not do so.

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

The Division's Benefit Policy Manual, Voluntarily Leaving 515.05 addresses whether claimants have good cause to quit work when an employer's actions do not comply with law or regulation:

B. Employer out of Compliance

Some working conditions, such as those affecting sanitation and safety, are regulated by law or regulation. A worker has good cause for voluntarily

quitting work whenever an employer is substantially out of compliance with law or regulation, if the employer fails to adjust the matter after it is brought to the employer's attention.

Example: A claimant quit her job because her supervisor attempted to save money by defunding one of the night aide positions. The claimant felt that this would create an unsafe environment for the residents she was in charge of. This had happened before and she had gone to the Board of Directors who had ordered the retention of two night aides. The claimant did not want to go to the Board again because she felt it would create a hostile work environment for her. The Tribunal held, in denying benefits, that she had not pursued all alternatives before quitting. (99 0502, April 12, 1999)

Example: A claimant quit his job as an asbestos abatement worker because the employer was exposing the employees to more than a safe percentage of asbestos fibers. The claimant had completed a course in asbestos abatement and therefore qualified as competent to recognize safe practices. He complained to the company's air monitoring person that the job was unsafe before quitting. In allowing benefits, the Tribunal held that he had good cause to quit. (99 0562, April 14, 1999)

The claimant in this case is mandated to report suspected child abuse. When the claimant notified the employer of an incident of suspected abuse, she was accused of lying to get a subordinate in trouble. The claimant's belief that the employer would not report the incident was reasonable and placed the claimant in a difficult position as a mandated reporter.

The Department has previously held that an employer's practice does not have to be outright illegal but may be only "highly questionable," to give a claimant good cause for leaving employment. In re Henshaw, Com. Dec. 88H-UI-019, April 12, 1988, citing Zinman, v. U.C. Board, 305 A2d. 380 (PA 1972)

The Tribunal finds that the employer's unwillingness to believe the claimant's report of the incident and report it to authorities as required gave the claimant a compelling reason to leave the work at the time she did. The Tribunal concludes that the claimant had good cause to voluntarily leave work at the time she did. The penalties of AS 23.20.379 are not appropriate.

DECISION

The determination issued on August 2, 2023 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending June 24, 2023 through July 29, 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 November 6, 2023.



Rhonda Bunes, Appeals Officer