



## APPEAL TRIBUNAL DECISION

**Docket number:** 23 0620      **Hearing date:** November 21, 2023

### CLAIMANT:

CINDY WATSON  
[REDACTED]

### EMPLOYER:

FICKLIN CONSTRUCTION LLC  
[REDACTED]

### CLAIMANT APPEARANCES:

Cindy Watson

### EMPLOYER APPEARANCES:

None

## CASE HISTORY

The claimant timely appealed an August 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 or was discharged for misconduct connected with the work.

## FINDINGS OF FACT

The claimant began work for the employer on May 22, 2023. She last worked on July 20, 2023. At that time, she worked full time as a project coordinator.

The claimant worked in the employer's office with the office manager. The office manager cursed at the claimant frequently when she was unhappy with the claimant's performance, including her document filing. The claimant complained to the owner, who she had known in a work capacity for many years. The owner advised the claimant he was not willing to do anything about the office manager's actions.

The claimant returned from a vacation that had been planned before she was hired. The office manager's behavior toward the claimant worsened after the claimant's return July 10, 2023. Shortly after the claimant started work on her last day, the office manager asked the claimant for a document on an electronic group chat with other office workers. The claimant replied that the document was properly filed both electronically and in the paper file and specified which sub-folder it was filed in. The office manager came to the claimant's desk and chastised the claimant and cursed at her for calling her out in the group chat. The

manager then screamed at the claimant to get out because she did not want her there. The claimant believed the office manager was discharging her, but she wasn't sure if the manager had the authority to discharge her. The manager said she was going to call the owner and the claimant wanted to speak with him too, but then the manager said the owner could not be called at that time because he was at the hospital with a family member. The claimant took her few personal items from her desk and left.

The claimant sent the owner a detailed message telling him what had occurred and that she was having a hard time continuing to work with the manager. The owner sent a message the next morning that he was sorry things had not worked out as planned. The claimant asked if she was being fired and the owner replied that he thought she had quit. The claimant replied that she only intended to tell him what had happened. The claimant held that she had no intention to quit the work. The owner did not reply. The claimant received her final paycheck by mail.

### **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 the 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 believed she was discharged when the office manager told her to leave. She attempted to clarify the matter with the employer the next day when she told him she believed she was discharged. The employer had the opportunity to clarify the matter if they wanted the claimant to return to the work, but the owner did not reply. The Tribunal concludes it was the employer who had the opportunity to continue the employment relationship and took no action, thus the separation is a discharge and the Tribunal will consider if the discharge was for work-related misconduct or for other reasons.

*When a worker has been discharged, the burden of persuasion rests upon the employer to establish that the worker was discharged for misconduct in connection with the work. In order to bear out that burden, it is necessary that the employer bring forth evidence of a sufficient quantity and quality to establish that misconduct was involved. Rednal, Com. Dec. 86-UI-213, August 25, 1986.*

The employer did not appear at the hearing to offer sworn testimony. The claimant provided credible testimony that her actions leading up to the discharge were not actions against the employer's interests. As in Rednal, it is the employer who has the burden to show if the claimant was discharged for work-related misconduct and that burden has not been met.

The Tribunal finds the claimant in this case was discharged for reasons other than misconduct. The penalties of AS 23.20.379 are not appropriate.

### **DECISION**

The determination issued on August 21, 2023 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending July 29, 2023 through September 2, 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 22, 2023.



Rhonda Bunes, Appeals Officer