



APPEAL TRIBUNAL DECISION

Docket number: 23 0650 **Hearing date:** November 21, 2023

CLAIMANT:

JUSTIN SLATER
[REDACTED]
[REDACTED]

EMPLOYER:

THREE BEARS ALASKA INC
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Justin Slater

EMPLOYER APPEARANCES:

None

DETS APPEARANCES:

None

CASE HISTORY

The claimant appealed a September 13, 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 established a claim for unemployment insurance benefits effective August 20, 2023. He began working for the employer on September 20, 2021. He last worked on August 21, 2023. At that time, he worked full-time as an assistant manager.

For about a year prior to the work separation, the claimant's schedule was 7 a.m. to 3:30 p.m. Monday through Friday. This schedule allowed him to get off work early enough to pick up his girlfriend's five-year-old child after school and to care for the child on Saturday while his girlfriend worked.

The employer went through a reorganization at the corporate level and there were changes made to the claimant's schedule. The employer informed the claimant that as an assistant manager he would have to work weekends and evenings. The claimant and his direct manager requested an exception for the claimant, but the corporate office refused to allow any adjustment to the

work hours for the assistant manager's position. The claimant was offered a demotion, which would have allowed flexibility in scheduling. However, the claimant felt accepting a demotion would undermine all the work he had done to work his way up to management. Further, he felt the employer's actions clearly showed it did not value its employees.

The claimant's girlfriend works for a bank. Her hours are set and there is no flexibility to her schedule. She works every Saturday and until 7 p.m. on weekdays. She put the child on the bus in the morning, and the claimant picks him up in the afternoon.

The child's father works as a corrections officer, one week on and one week off. He has the child during the weeks he is not working. However, he has no flexibility in his work schedule to help with the child in the weeks he is working.

On August 21, 2023, the claimant went to work as normal. He told the manager he would work until the first time the schedule interfered with his ability to take care of the child. About an hour later, the school called the claimant about some paperwork that needed to be completed. It took over two hours for the claimant to get the paperwork sorted. When he returned to work, he told the manager that he was quitting immediately as it was clear things were not going to 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).
- (g) (4) immediate family member means a person who is related to the claimant by blood, marriage, or adoption as a parent, child, spouse, brother, sister, grandparent, or grandchild.

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

Establishing good cause for quitting work has two elements. The claimant must first show the reason for quitting work was compelling, and then show they exhausted all reasonable alternatives prior to quitting¹.

At the time the claimant quit work, he was working his preferred schedule. The issue with the school would have been the same even if the schedule was not going to change. Therefore, the new schedule was not the reason the claimant chose to quit that day.

As outlined above, quitting work to care for immediate family members may be compelling under very specific circumstances, which do not apply to this case. The regulation also defines an immediate family member, as it applies to unemployment insurance, which does not include the children of a partner in an informal domestic relationship.

Furthermore, the employer has the right to make work assignments it feels best meet business needs. The employer offered a reasonable alternative to the claimant, which would have allowed him to keep his preferred work hours. We understand the claimant's reluctance to accept a demotion. However, accepting that option would have allowed the claimant to continue working and still provide care for his girlfriend's child.

DECISION

The determination issued on September 13, 2023, is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending August 26, 2023, through September 30, 2023. The three weeks reduction of maximum benefits remains, and the claimant may not be eligible for extended benefits under AS 23.20.406-409.

¹ *The claimant has the burden of establishing good cause for voluntarily leaving work. The basic definition of good cause requires the existence of circumstances so compelling in nature as to leave the claimant no reasonable alternative but to leave employment. The definition contains two elements. The reason for leaving must be compelling, and the worker must exhaust all reasonable alternatives before leaving. Luke, Comm'r Dec. No. 00 2296, March 12, 2001.*

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 27, 2023.



Kimberly Westover, Appeals Officer