



APPEAL TRIBUNAL DECISION

Docket number: 23 0669 **Hearing date:** November 30, 2023

CLAIMANT:

RAY TILBURY
[REDACTED]

EMPLOYER:

JL HOTEL SEWARD LLC
[REDACTED]

CLAIMANT APPEARANCES:

Ray Tilbury

EMPLOYER APPEARANCES:

Tim Lloyd
Amber Stringer
Duane Stark
Yolanda Valdivies

CASE HISTORY

The claimant timely appealed a September 15, 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 June 15, 2023. He had worked for the previous business owner for about nine years. The claimant last worked on August 19, 2023. At that time, he worked full-time as a maintenance engineer.

The claimant had completed a list of projects that was left for him by the director of engineering. The director oversaw several worksites in the area and he was in a supervisory position over the claimant, as was the hotel's general manager who oversaw the daily operations at the claimant's worksite. The director left a second list of projects for the claimant which included 5-6 items which the director estimated would take about three work days to complete. The director asked the claimant to complete the items on the list before the director returned in a week. The list included cutting the grass before it began raining. The claimant felt overwhelmed by the list. He felt the director was adding too many tasks to his job duties and the tasks could not be completed in the time allowed. The claimant had

not been counseled that he was not meeting the employer's standards for project completion.

On August 20, 2023, the claimant sent a text message to the engineering director, telling the director that he did not need to be told to mow the grass and he did not need a project list with time constraints. The claimant's message ended, "I suggest that you find someone who will jump at your demands. It's not me my friend." The director responded that the claimant should turn his keys into the general manager as soon as possible and the claimant replied, "Thank you."

The claimant held that he did not mean to quit the job when he sent the message and held that he was just trying to tell the director that he should hire a landscaper if the grass needed to be mowed at a certain time. The claimant did not attempt to explain to the director that he had not quit after he was told to turn in his keys. The claimant turned in his keys to the front desk the next morning. The claimant and the general manager exchanged some messages in the following days about returning personal items of the claimant's and the claimant offered that he could be called with questions if needed. The claimant did not tell the general manager that he had not intended to quit the 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....
 - (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 work or whether he 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 Tribunal finds that the claimant in this case took the actions that ended the employment when he told the engineering director to find someone else to meet his demands. The claimant failed to correct the director's assumption that he had quit and he did not tell the general manager that he had not intended to quit. The Tribunal finds the claimant voluntarily quit the work, and will consider if he had good cause to do so.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work. The regulation also directs the Department to consider the suitability of the work as laid out in AS 23.20.385(b). The claimant did not establish that the work was a risk to his health, safety or morals, or that he was not physically fit for the work. This leaves the Tribunal to consider other factors that would influence a reasonably prudent person in the claimant's circumstances.

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 employer's project list created a circumstances where he had no reasonable alternative to quitting. The employer had the right to direct the claimant's work. The claimant did not pursue the reasonable alternatives of seeing how much work he could get done before the director returned, or consulting the general manager about his job duties.

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


DECISION

The determination issued on September 15, 2023 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending August 26, 2023 through September 30, 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 December 1, 2023.


Rhonda Bunes, Appeals Officer