



## APPEAL TRIBUNAL DECISION

**Docket number:** 23 0670    **Hearing date:** December 8, 2023

**CLAIMANT:**

MICHELL BETTIS  
[REDACTED]

**EMPLOYER:**

CLASSIC AK TRADING/BIG RAY'S AK  
[REDACTED]

**CLAIMANT APPEARANCES:**

Michelle Bettis

**EMPLOYER APPEARANCES:**

None

### CASE HISTORY

The claimant timely appealed a September 19, 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 October 25, 2021. She last worked on June 9, 2023. At that time, she worked full time as an accounting assistant.

The claimant had problems with a coworker. The coworker was a supervisor, but not the claimant's supervisor. When the claimant asked questions of the supervisor, the supervisor would not help or would simply ignore the claimant. The supervisor physically bumped into the claimant a number of times in the hallway, which the claimant felt was done intentionally because there was plenty of room to pass in the hallway. In May 2022, another coworker brought the supervisor's treatment of the claimant to the employer's attention, but the supervisor's behavior did not change. The claimant made a complaint to the employer in October 2022. The employer found that the claimant's complaints could not be substantiated. The claimant was warned not to file complaints that could not be substantiated or it would be considered harassment of the supervisor.

On June 2, 2023, the supervisor again intentionally bumped into the claimant in an area where there was plenty of room to pass without contact. The claimant was

frustrated with her treatment by the supervisor and she knew she would get in trouble if she complained again without any way to prove her complaint. The claimant submitted her resignation, citing no improvement in workplace hostility and giving the employer two weeks notice that her last day would be June 16, 2023.

On June 7, 2023, the employer advised the claimant that it would be preferable to end her employment on Friday, June 9, 2023, as it was the end of a pay period and the employer was switching to a new accounting system on the following Monday. The claimant agreed.

Documents in the record show the employer advised the Division that the claimant ended her work before her notice date because she had an altercation with a coworker on June 9, 2023. The claimant denied that there was any altercation on June 9, 2023 and held that everyone in the office knew the claimant's last day was set to be June 9, 2023. The claimant held that she was willing to work out her notice period.

### **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 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.

In Flores, Com. Dec. No. 96 2183, December 16, 1996, the Commissioner set new policy regarding work separations earlier than the original intended date as follows:

*In Kennedy, Com. Dec. 9027951, October 10, 1990, we held that a claimant who was given one day's notice of a layoff and who then was given permission for leave the last day, remained laid off. The separation did not become a quit. We now extend that holding to cover workers who leave early after notice of discharge, but with less than two full shifts remaining in the notice period. These workers will be considered discharged. The discharge remains the primary and proximate reason for their unemployment. Inversely, if a claimant gives notice and the employer chooses to end the employment with less than two shifts remaining, the nature of the separation remains a voluntary leaving....*

The claimant in this case gave notice that she would voluntarily leave the work on June 16, 2023, but the employer ended the employment relationship on June 9, 2023 because it was the end of the pay period and the employer did not want the claimant to start using a new accounting program for the last week of her work. Considering the facts here and the precedent-holding decision of the Commissioner, the Tribunal find the separation is a discharge, as the employer took the action that ended the working relationship with more than two shifts remaining in the claimant's notice period.

The record does not reflect that the claimant was discharged on June 9, 2023 for any reason other than the fact that the claimant had resigned, and the employer considered it would be more convenient to end the employment relationship at the end of a pay period and before the new accounting software went into use. These reasons do not reflect that the claimant acted with willful

disregard of the employer's interests. The Tribunal concludes that the claimant was discharged for reasons other than misconduct and the penalties of AS 23.20.379 are not appropriate.

### **DECISION**

The determination issued on September 19, 2023 is **MODIFIED** and **REVERSED**. Benefits are **ALLOWED** under AS 23.20.379(a)(2) for the weeks ending June 17, 2023 through July 22, 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 December 11, 2023.



Rhonda Bunes, Appeals Officer