



APPEAL TRIBUNAL DECISION

Docket number: 23 0709 **Hearing date:** December 13, 2023

CLAIMANT:

RAYMOND MADDOX
[REDACTED]
[REDACTED]

EMPLOYER:

PAPA JOHN'S
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Raymond Maddox

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a September 20, 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 September 21, 2021. He last worked on August 6, 2023. At that time, he worked as a pizza delivery driver.

The claimant's driving record with the Division of Motor Vehicles was reviewed yearly. On August 6, 2023, the claimant was advised that he was no longer able to be employed as a driver because of the number of points he had accrued on his driving license as a result of driving offenses. The claimant recalled that he had most recently received a speeding ticket when he was driving down a hill, not paying attention to his speed, and went over the speed limit at 70 miles per hour. The claimant did not recall what date he got the speeding ticket, but recalled that it was not during work time. The claimant was aware that the employer had a policy that they could not employ a driver who had a certain number of points on their driver's license.

The employer offered the claimant work inside the restaurant, but the claimant did not accept that work. The claimant has a medical condition that prevents him from standing for long without sitting for a period. The claimant did not believe the employer would accommodate his need to sit frequently.

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

Alaska Statute 23.20.379 requires the Division to examine the reason an unemployment insurance benefit claimant has become unemployed and determine if penalties spelled out in the statute should be applied. The Division determined the claimant was discharged for work related misconduct.

The claimant was discharged because the employer could no longer have the claimant work as a delivery driver because he had exceeded the number of points on his driver's license that the employer could tolerate according to their policy. The claimant held that his actions which led to his discharge were not a willful disregard of the employer's interests because the ticket was given to him during his off-work time and he did not purposely get a speeding ticket. The Tribunal does not agree.

In Davis, Com. Dec. 04 1625, December 13, 2004, the Commissioner held in part: Under 8 AAC 85.095, off-duty activity/action can be found to be misconduct connected with the work if the conduct

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- (A) *shows a wilful and wanton disregard of the employer's interest; and*
- (B) *either (i) has a direct and adverse impact on the employer's interest: or (ii) makes the claimant unfit to perform an essential task of the job.*

The claimant was aware of the employer's policy regarding driving offenses and driver's license points. The claimant held he did not purposely get a speeding ticket, however it was within his control to obey traffic laws. The claimant's actions in speeding and getting a ticket made him unfit to perform his job. The Tribunal finds the claimant's actions rise to the level of misconduct connected to the work as it is described in regulation 8 AAC 85.095(d).

The Tribunal concludes the claimant was discharged for misconduct connected to the work. The penalties of AS 23.20.379 are appropriate.

DECISION

The determination issued on September 20, 2023 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending August 12, 2023 through September 16, 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 15, 2023.



Rhonda Bunes, Appeals Officer