



APPEAL TRIBUNAL DECISION

Docket number: 23 0780 **Hearing date:** January 24, 2024

CLAIMANT:

LAURANDY OLIBRICE
[REDACTED]
[REDACTED]

EMPLOYER:

AK CENTRAL EXPRESS INC
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Laurandy Olibrice

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed an October 30, 2023 determination that 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 began work for the employer on December 19, 2022. He last worked on October 10, 2023. At that time, he worked full time as a flight follower.

The claimant is a qualified commercial pilot. He accepted the job as a flight follower in order to work in the industry and improve his chances of getting a pilot job when the employer was hiring pilots. The employer told the claimant that in order for him to apply for the pilot position, they would have to fill his position as a flight follower. The claimant worked his last day on October 10, 2023 and interviewed for the pilot position on October 11, 2023. The claimant was advised on October 13, 2023 that he was not hired for the position.

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).

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

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 argued that he did not voluntarily quit the job and he would have continued to work as a flight follower while interviewing for the pilot position and afterward if the employer had permitted it. However, the claimant knew he was leaving the flight follower job because another person was going to fill the position, and he understood that he was not guaranteed to be hired as a pilot. The claimant voluntarily made the choice to leave the work in order to apply for a better position. The separation is a voluntary leaving and the Tribunal will consider if the claimant had good cause to leave the work at the time he did.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work, including leaving work to accept a bona fide offer of work that offers better compensation, hours, benefits or working conditions. The claimant did not have an offer of work, he had an opportunity to interview for the 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 worked as a flight follower for almost a year. 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 quit for an allowable reason and did not establish that the work was unsuitable for him. While it is understandable that the claimant desired to work at his full qualifications and it is unfortunate that he had to quit work in order to try to do so, the Tribunal cannot find the claimant had good cause to voluntarily quit suitable work. The penalties of AS 23.20.379 are appropriate in this case.


DECISION

The determination issued on October 30, 2023 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending October 21, 2023 through November 25, 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 January 26, 2024.


Rhonda Bunes, Appeals Officer