



APPEAL TRIBUNAL DECISION

Docket number: 23 0809 **Hearing date:** February 7, 2024

CLAIMANT:

CARL SMITH
[REDACTED]
[REDACTED]

EMPLOYER:

KENDALL DEALERSHIPS OF ALASKA
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Carl Smith

EMPLOYER APPEARANCES:

Michelle Dewey

CASE HISTORY

The claimant timely appealed a November 20, 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 April 3, 2023. He last worked on about August 26, 2023. At that time, he worked full time as a salesperson.

On about August 10, 2023, the claimant's supervisor yelled at him and called the claimant names in front of witnesses. The supervisor was suspended and then terminated on August 15, 2023. After the supervisor left, the claimant felt that his co-workers were treating him differently and that they blamed him for getting the well-liked supervisor fired, although the claimant had not taken any action to get the supervisor fired. The claimant was frustrated that the employer did not check in with him about the incident and he felt uncomfortable at work.

The claimant also felt the supervisor's absence created problems with his ability to make sales, because he was still a new salesperson and he needed a manager available immediately to help him get deals worked out. The claimant and his co-workers complained to other managers, and they were advised the employer was working on getting the role filled. Since the claimant worked on commission only, he believed the lack of leadership in his unit was costing him income by delaying deals. The claimant held in the hearing that he could have dealt with the income situation, if not for feeling uncomfortable at work after the supervisor's firing.

The claimant did not bring his concerns with the working conditions to the employer's human resources office or inquire about a complaint or grievance procedure. The claimant did not consider doing so and did not think his concerns would be taken seriously by the employer if he did complain.

The claimant came in before his shift on August 27, 2023 and told the managers on duty that he was quitting effective immediately.

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

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 claimant in this case voluntarily quit after his supervisor was fired for yelling at the claimant.

Regulation 8 AAC 85.095(c) provides seven reasons that the Department will consider when determining good cause for voluntarily leaving work, including leaving because of working conditions, but holds the claimant must have no reasonable alternative to leaving the work. The claimant in this case did not pursue the reasonable alternative of bringing his concerns with the working conditions to the employer's attention before quitting the work.

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 in this case did not pursue reasonable alternatives to leaving the work and gave the employer no opportunity to address his concerns before leaving the work. The claimant has not established that he had good cause to leave the work at the time he did.

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

DECISION

The determination issued on November 20, 2023 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending September 2, 2023 through October 7, 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 February 9, 2024.



Rhonda Bunes, Appeals Officer