



APPEAL TRIBUNAL DECISION

Docket number: 23 0854 **Hearing date:** February 8, 2024

CLAIMANT:

MICHAEL HUENEKA
[REDACTED]
[REDACTED]

EMPLOYER:

NUMBER ONE AND DONE PROPERTY
MAINTENANCE CO LLC
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Michael Hueneka

EMPLOYER APPEARANCES:

Steve Langley

CASE HISTORY

The employer timely appealed a November 29, 2023 determination which allowed the claimant's benefits without penalty 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 25, 2023. He last worked on about October 13, 2023. At that time, he worked on call as a laborer.

When the claimant finished the work assignment on his last day, it was not known when the claimant would next be needed for work. The employer contacted the claimant by phone to let him know when he was needed. The employer paid employees \$50 per month to cover the business use of their personal cell phones. The employer had determined that a basic phone with unlimited calling minutes could be purchased for \$50 per month.

On October 14, 2023, the claimant sent the employer a text message stating that his phone service would be shut off at midnight. The employer agreed to communicate with the claimant by email to let him know when he was needed for work. Some time after that date, the employer sent the claimant an email to check on the claimant's phone status and the email was returned undeliverable.

Documents in the record show that when the claimant established his claim for benefits, he told the Division he had been discharged because he did not have his own car and was required to get a ride to work with a coworker. The employer denied that was true, and held that he had arranged for a worker was on the clock to pick up the claimant every time he was needed for work and continuing that arrangement was not a problem for the employer. The employer was frustrated with the claimant's attendance, as he had called out ten times in his short tenure with the employer, however the employer was willing to continue to employ the claimant until he was unable to contact him for work, and the employer determined that the claimant must not want to 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 Commissioner of the Department of Labor and Workforce Development has long held that when a claimant is working on call, each separate call to work is a separate assignment. There is a separation issue only if the claimant leaves the work before the completion of the assignment. If, at the end of an assignment, the claimant was laid off, with no definite return-to-work date, there is no separation or suitable work issue between assignments, even if the claimant does not call in for another assignment. A layoff due to lack of work is a non-disqualifying discharge.

The claimant in this case finished his last work assignment on about October 13, 2023 and his next work assignment date was not yet set. The Tribunal concludes that the claimant was laid off due to a lack of work after his shift on October 13, 2023 and the penalties required in AS 23. 20.379 do not apply.

DECISION

The determination issued on November 29, 2023 is **AFFIRMED**. Benefits remain **ALLOWED** for the weeks ending October 7, 2023 through November 11, 2023, if otherwise eligible. The three weeks are not reduced from 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 February 9, 2024.



Rhonda Bunes, Appeals Officer