



APPEAL TRIBUNAL DECISION

Docket number: 23 0880 **Hearing date:** February 9, 2024

CLAIMANT:

TERRANCE BARRETT
[REDACTED]

EMPLOYER:

GENUINE PARTS COMPANY
[REDACTED]

CLAIMANT APPEARANCES:

Terrance Barrett

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a December 12, 2023, determination that denied benefits under Alaska Statute 23.20.379. The issue before the Appeal Tribunal is whether the claimant had good cause to voluntarily quit suitable work or was discharged for misconduct connected with the work.

FINDINGS OF FACT

The claimant began work for the employer in October 2023. He last worked on November 21, 2023. At that time, he worked full-time as a delivery driver.

Near the end of his employment, the claimant's supervisor sent him an email outlining errors the claimant made during his employment. The claimant did not believe he had made the errors indicated in the review. He was upset and there was some sort of interaction with the supervisor where he argued about whether he forgot a delivery.

On the last day he worked, the claimant indicated he was talking with his supervisor and a co-worker about the deliveries for the day. The cashier interrupted the conversation and said something to the effect of, "You have to be gay, like me, if you want to make friends." The claimant believed the statement was made to him specifically, and he took offense. At that time, he did not tell the individual his comments were unwanted, nor did he say anything to the manager.

After finishing his deliveries, the claimant stated he returned to the store and saw that the supervisor had left. He was concerned about going inside because of what happened earlier in the day. Throughout the rest of the day, the claimant stated

the same co-worker continued to make inappropriate references regarding homosexual acts. The claimant believed a comment he overheard about someone having a baseball bat was referring to harming him. Although the claimant states he was not threatened by the statement as the other individuals were, "little men."

The next day, the claimant stated he could not face going back to work, the sexual comments made him sick, so he called out for the day. He may have called off work for several days in a row. The claimant stated he made the decision to quit at the point he had secured another job that was scheduled to begin after Christmas.

The claimant stated he called the human resources office the morning of November 22, 2023, and they told him to file an ethics report. The claimant provided a copy of the report he filed with the employer's online ethics portal, which was submitted on November 27, 2023.

In the report, the claimant indicated, "Since November 1, 2023, Virginia, Dexter, Adrian, and Jeff (last name unknown), clerk, have been creating a hostile work environment for Terrance to work in. Adrian, Jeff, and Dexter are homosexuals, and they constantly make sexually inappropriate comments throughout the work area." The next two sentences provide explicit details of the comments.

The claimant then goes on to state, "Jeff was saying Terrance needed to be a part of the homosexual group or else he would have to get a baseball bat. Jeff wanted to get a baseball bat to hit Terrance. Adrian, Dexter, and Jeff were making Terrance uncomfortable throughout the work environment." The final paragraph of the report spoke only about a performance review, stating "Virginia created a horrible report to reflect Terrance's first 30 days' performance at the job."

There was a second ethics complaint filed by the claimant on December 8, 2023, the claimant reported he purchased a battery from Virginia on November 17, 2023, and it was a bad battery.

The claimant stated the human resources office returned his call and told him not to go to work until the investigation was complete. Then at some unknown time, the human resources office called the claimant and told him the investigation was complete, and he could return to work. The claimant could not recall any details of the discussion with the human resource staff.

The claimant asked if he could transfer to the store that was just around the corner from him instead of going back to the store that was further away. The human resources office responded that there were no openings at the other store. The claimant declined to return to the original store. The claimant indicated he would have continued working for the employer if the transfer to another worksite had been granted.

The claimant also stated he called the unemployment insurance office for advice on whether he should quit his job. The technician was sickened by what his co-worker was saying and told him he should go home and file an unemployment

claim. The claimant appears to have felt the technician gave permission for him to quit his job and collect unemployment benefits.

The Tribunal takes official notice of a previous appeal filed by the claimant after his work separation from a different employer. On July 17, 2023, the Department issued a decision under the docket number 23 0298. The decision was posted online to the Division's public website. Although the claimant's appeal involved reopening his appeal, the decision contained the following statement, "[T]he claimant states he did not attend the hearing due to the mental stress caused by the harassment of him not being gay. The claimant indicates it made him ill when he thinks about the work circumstances leading to his termination."

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

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’s testimony regarding his separation from work was disjointed and difficult to clarify. The claimant was often vague or nonresponsive to questions, he could not recall dates or certain details of events, and he often veered off topic. While it was understandable the claimant may have forgotten some details over time, the gaps in memory often involved matters where his answers may not have supported his argument.

The details of the final interactions between the claimant and employer were elusive. However, the claimant made the choice not to return to work, which ended the employment relationship. Therefore, the claimant voluntarily quit work.

The Tribunal does not take allegations of workplace harassment lightly. There is no excuse for employees to make sexually explicit comments to each other while at work. It is inexcusable for an employer to allow such behavior in the workplace and could be good cause for quitting work. However, such allegations must be supported with reasonable evidence.

“The standard of proof in administrative appeals for unemployment benefits eligibility is that a preponderance of the evidence must support the conclusion.” Peterson, Comm’r Dec. 04 2376, February 28, 2005.

The claimant’s testimony lacked credibility. Initially, he stated that one employee was making sexual remarks, but later the claimant states that the manager and three employees were involved. The claimant stated he made the ethics complaint the day after the events, but the copy of the report shows it was submitted on November 27, 2023, six days after he last worked.

In the ethics report the claimant made specific allegations of being threatened with a baseball bat, but in the hearing, he stated that he overheard comments about a baseball bat that he assumed were about him. He could offer no explanation why he believed the baseball bat references were about him. The claimant declined to provide any detail of the statements that were made while he was providing sworn testimony. However, he was more specific when giving his closing statement. The discrepancies and conflicting statements continue throughout both the claimant’s testimony and the case documents.

Furthermore, the Tribunal finds it unlikely the claimant found himself employed with two different employers within the same year where he was exposed to explicit sexual harassment of such a similar content.

Based on the preponderance of evidence, the Tribunal finds the claimant has failed to establish he had good cause for quitting work.

DECISION

The determination issued on December 12, 2023, is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending November 25, 2023, through December 30, 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 23, 2024.


Kimberly Jackson-Matta, Appeals Officer