



APPEAL TRIBUNAL DECISION

Docket number: 24 0078 **Hearing date:** March 14, 2024

CLAIMANT:

JAKE ELLIOTT
[REDACTED]

EMPLOYER:

FULLFORD ELECTRIC INC.
[REDACTED]

CLAIMANT APPEARANCES:

Jake Elliott

EMPLOYER APPEARANCES:

Jessica Ruis

CASE HISTORY

The claimant timely appealed a December 28, 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 established a claim for unemployment insurance benefits effective December 3, 2023. He began work for the employer on July 27, 2021. He last worked on July 14, 2023, as a full-time journeyman electrician.

The claimant was living and working in North Pole, Alaska. On July 14, 2023, the claimant took a leave of absence so he could sell his house and move to Soldotna. Neither the claimant nor the employer indicated a time the leave of absence would end.

The claimant moved to Kenai, Alaska at some point in October of 2023. Soon after, he contacted the employer to see if there was any work available in Kenai. The employer did not have any work at the time but told the claimant there might be something coming up soon. On December 7, 2023, he contacted the employer when it was clear the work in Kenai was unlikely to happen and asked for a "lay-off slip," so he could get back on the union out of work list.

The employer still had work available in Fairbanks, but to accept the work, the claimant would have to live in Fairbanks as the distance from Soldotna was too far to commute.

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]n individual may have a 'first week' of unemployment when the individual ceases to perform services and again another 'first week' of unemployment when the employer-employee relationship is actually severed." Alcantara, 83H-UI-087, June 6, 1983.

There was no dispute that the claimant separated from employment in June of 2023, for personal reasons. What must be determined is whether there was a second point of separation when the claimant requested a lay off notice from the employer that would allow him to get on the union dispatch list. The defining factor in this decision was whether the leave of absence maintained the employment relationship.

Under normal circumstances, an employee who requests a leave of absence plans to return to work for the employer in the same position, location, and under the same general conditions. In this case, the claimant had no intention of returning to work in Fairbanks. Therefore, he quit the work in Fairbanks on July 14, 2023.

The fact the employer did not have work available in the Kenai area did not change the work separation to a lay-off. It was the claimant's choice to remove himself from the area where work was available and relocate to an area where there was no work.

The employment relationship was tenuous at best and had no obvious benefit to either party. There was no evidence showing the claimant had any guarantee of a position being available in Kenai. The fact the employer did not have work

available in Kenai did not change the work separation to a lay-off. It was the claimant's choice to remove himself from the area where work was available and relocate to an area where there was no work.

8 AAC 85.095 outlines the conditions that are considered good cause for quitting work. None of the claimant's circumstances fall into one of the categories listed. Therefore, the claimant quit work without good cause on July 14, 2023, and there was no second point of separation to be considered.

DECISION

The determination issued on December 28, 2023, is **MODIFIED**. Benefits remain **DENIED** but the penalty period is for the weeks ending July 22, 2023, through August 26, 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 March 29, 2024,



Kimberly Jackson-Matta, Appeals Officer