



## **APPEAL TRIBUNAL DECISION**

**Docket number:** 24 0108      **Hearing date:** March 11, 2024

**CLAIMANT:**

XAVIER STRONG

**EMPLOYER:**

AIR FORCE NAF 427

**CLAIMANT APPEARANCES:**

Xavier Strong

**EMPLOYER APPEARANCES:**

None

### **CASE HISTORY**

The claimant timely appealed a January 23, 2024, 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 31, 2023. The claimant last worked as a motor vehicle operator on or about December 12, 2023. The claimant was working full-time earning \$21.00 per hour.

The claimant accepted a position as a civilian worker on Ramstein Air Force Base in Germany. He initially lived with his brother until he could find housing. Approximately five months before quitting work, the claimant moved into an apartment located off the base. His rent and utilities were approximately €1160 per month, which equates to \$1267 at the current exchange rate.

About two months after the claimant moved into his apartment the hot water stopped working. He called the landlord who agreed to have someone fix the problem. The landlord entered the apartment without notifying the claimant and saw the apartment while the claimant was in the process of getting fully moved and unpacked. The landlord refused to turn the hot water back on

telling the claimant he was too messy to live there. The claimant was without hot water or heat for over three months.

The on base attorneys office attempted to help the claimant but there was little they could do, and the landlord still refused to turn on the water. The claimant considered moving to another apartment, but he did not have the financial resources to pay another €2000 security deposit or to try suing the landlord in German court. He also was not eligible to live on base as a civilian contractor. The claimant ended up leaving many of his personal items in Germany to returned to Alaska and live with his parents until he can find other 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....

#### **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**

8 AAC 85.095(c) provides seven specific circumstances that are considered compelling reasons to quit work. The claimant did not quit for one of the allowable provisions. However, the regulation also requires the consideration of other factors listed in AS 23.20.385(b). The statute states that when considering the existence of good cause for leaving work, the department shall consider other factors that would influence a reasonably prudent person in the claimant's circumstances.

*The claimant has the burden of establishing good cause for voluntarily leaving work. The basic definition of good cause requires the existence of circumstances so compelling in nature as to leave the claimant no reasonable alternative but to leave employment. The definition contains two elements. The reason for leaving must be compelling, and the worker must exhaust all reasonable alternatives before leaving. Luke, Comm'r Dec. No. 00 2296, March 12, 2001.*

The claimant quit work because his living conditions were untenable. He had no heat or hot water for over three months. He made reasonable attempts to get help and to consider other options. He quit his employment only after exhausting all reasonable options to fix his living situation. A reasonably prudent person would not continue living without heat or hot water once he realized the situation was not going to change. Therefore, the claimant's reason for quitting work was compelling, and he exhausted reasonable alternatives prior to quitting work. Good cause for quitting work was established.

### **DECISION**

The determination regarding the work separation issued on January 23, 2024, is **REVERSED**. Benefits are **ALLOWED** for the weeks ending December 16, 2023, through January 20, 2024, **if otherwise eligible**. The three weeks are restored to 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 March 11, 2024.

Kimberly Westover, Appeals Officer