



APPEAL TRIBUNAL DECISION

Docket number: 24 0264 **Hearing date:** June 24, 2024

CLAIMANT:

JESSICA PAVY
[REDACTED]

EMPLOYER:

ALASKA YELLOW DISPATCH LLC
[REDACTED]

CLAIMANT APPEARANCES:

Jessica Pavy

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a February 27, 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 or was discharged for misconduct in connection with the work.

FINDINGS OF FACT

The claimant began her most recent period of work for the employer in November 2022. She last worked on January 16, 2024. At that time, she worked full-time as a dispatcher and assistant to the fleet manager.

The claimant's usual schedule of work was Monday through Friday between 7:00 am and 4:00 pm. At about 9:00 pm on January 16, 2024, the claimant was advised via a text message from the general manager that her schedule was being changed effective the next day to 3:00 pm to 11:00 pm Tuesday through Saturday. The claimant immediately tried to call the general manager but he did not answer or return her call. The claimant contacted the fleet manager, who was the claimant's mother. The fleet manager tried to call the general manager but did not get a response and she advised the claimant she would not get further involved because of the family relationship. The claimant sent the general manager another text stating that she could not work the new schedule the next day.

The claimant has two teenaged children in high school. One child attended a hybrid program on the university campus and one attended a high school

outside the school zone of the claimant's residence. School bus service and public transportation were not available for either child to get home or to after-school work. No other family members were available to pick the claimant's children up. In addition, the new evening work schedule would leave the claimant's children unsupervised five nights per week, which she did not feel was acceptable. The claimant had worked an evening schedule in the past to cover for vacations, but she was unable to arrange alternate transportation for her children on short notice and the winter weather and darkness precluded requiring the children to walk.

The general manager sent a text message to the claimant the next day advising her that if she did not show up for her scheduled shift at 3:00 pm that day she would be considered to have quit the work. The claimant confirmed she could not work that shift.

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 first matter before the Tribunal is whether the claimant voluntarily quit the work or whether she was discharged. 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 in this case established that she had no intention to quit the work, but she was unable to change her schedule without notice due to her children's transportation needs. The Tribunal finds that the employer in this case took the action that ended the work when they told the claimant that the employment relationship would end if she could not show up to work the new schedule. The separation is a discharge and the Tribunal will consider if the claimant was discharged for work related misconduct.

The meaning of the term misconduct is limited to conduct evincing such willful disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed "misconduct" within the meaning of the statute. Boynton Cab Co. v. Neubeck, 237 Wis. 249, 296 N.W. 636 (1041) from Lynch, Com. Rev. No. 82H-UI-051, March 31, 1982.

The claimant was unable to work a changed shift on short notice. The claimant's inability to work due to her responsibilities as a parent is not a circumstance that demonstrates a willful disregard of the employer's interest as it is described in Boynton, above and in regulation 8 AAC 85.095(d).

The Tribunal does not find the claimant's actions which led to her separation from employment rose to the level of misconduct. The penalties of AS 23.20.379 are not appropriate.

DECISION

The determination issued on February 27, 2024 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending January 20, 2024 through February 24, 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 on June 7, 2024.



Rhonda Bunes, Appeals Officer