

This material is part of a collection that documents the harassment, discrimination, and retaliation perpetrated against Alaska's women research scientists by their supervisor, with full knowledge (and arguably, "tacit approval") of their federal employer, the USDA Agricultural Research Service (ARS)

**ALASKA DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
EMPLOYMENT SECURITY DIVISION
3301 EAGLE STREET, SUITE 206
ANCHORAGE, ALASKA 99503-4149**

APPEAL TRIBUNAL DECISION

Docket No. 10-2533

Hearing Date: October 13, 2010

CLAIMANT:

EMPLOYER:

CYNTHIA K BOWER

445 DEPT OF AGRICULTURE

CLAIMANT APPEARANCES:

EMPLOYER APPEARANCES:

Cynthia K. Bower

Janis Contento

ESD APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a September 20, 2010 determination that denied benefits pursuant to AS 23.20.379. The issue is whether the claimant voluntarily quit work without good cause.

FINDINGS OF FACT

The claimant began work for the employer on October 4, 2004. She last worked on August 17, 2010. She earned \$73,000 per year for full-time work as a research food scientist.

The claimant filed a complaint with the Equal Employment Opportunity Commission (EEOC) in January 2009.

On August 19, 2010, the claimant and employer participated in an EEOC mediation. The mediation resulted in a settlement offer to the claimant in which the employer required the claimant to resign immediately. The claimant's options were to sign the settlement or return to work under the same conditions. The next step in the EEOC process was a full hearing. There was no indication of the timeline for a hearing. The claimant accepted the terms of the settlement.

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 health or physical condition 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 is ill or has a disability;
 - (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) 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

Regulation 8 AAC 85.095 (8) requires that the Department consider other factors provided in AS 23.20.385 to consider other factors that would influence a reasonably prudent person in the claimant's circumstances.

In Missall, Comm'r Dec. 8924740, April 17, 1990, the Commissioner of Labor summarized Department policy regarding what constitutes good cause for voluntarily leaving work. The Commissioner held, in part:

The basic definition of good cause is 'circumstances so compelling in nature as to leave the individual no reasonable alternative.' (Cite omitted.) A compelling circumstance is one 'such that the reasonable and prudent person would be justified in quitting his job under similar circumstances.' (Cite omitted). Therefore, the definition of good cause contains two elements; the reason for the quit must be compelling, and the worker must exhaust all reasonable alternatives before quitting.

In a situation as defined in this case, there is a point when a reasonable claimant and employer determine it is best for both parties to move on. This is

a good example of just such a situation. The party's had waited a year and a half for resolution of an EEOC complaint. Had the claimant not accepted the settlement offer there is no telling when further action would have occurred. Therefore, it was in each party's best interest to sign the settlement at that point. Any reasonable and prudent person(s) would make that same decision.

Therefore, good cause for quitting has been established.

DECISION

The determination issued on September 20, 2010 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending August 22, 2010 through October 2, 2010, if the claimant has filed and is otherwise eligible. The three weeks are restored to the claimant's maximum benefit entitlement. The determination will not interfere with the claimant's eligibility for extended benefits.

APPEAL RIGHTS

This decision is final unless an appeal is filed to the Commissioner of Labor 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 appeal rights and procedures is enclosed.

Dated and Mailed in Anchorage, Alaska, on October 14, 2010.

Kimberly Westover

Kimberly Westover, Hearing Officer