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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)
)
 [REDACTED],)
) OHA Case No. 08-FH-0236
)
 Claimant,)
) Division Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (hereinafter "Claimant") was receiving Temporary Assistance benefits. (Ex. 1). On March 3, 2008, the Division of Public Assistance (hereinafter "Division") sent the Claimant notice it was imposing a job quit penalty and her benefits would be discontinued for a month. (Ex. 4). On March 24, 2008, the Claimant requested a fair hearing. (Ex. 9). Pursuant to the Claimant's request, a hearing was held on April 23, 2008. The Claimant attended the hearing and represented herself. [REDACTED], Work Services Specialist from Nine Star Enterprises, and [REDACTED], a friend, testified on her behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division. [REDACTED], Eligibility Technician II with the Division, and [REDACTED], Claimant's former employer, testified on behalf of the Division.

STATEMENT OF THE ISSUES

Was the Division correct to impose a 30 day job quit penalty against the Claimant for voluntarily quitting her job on February 7, 2008?

FINDINGS OF FACT

1. On October 23, 2007, the Claimant applied for Temporary Assistance benefits with the Division. (Ex. 1).

2. Claimant started work in mid-January of 2008, at [REDACTED]. Her employer was [REDACTED]. Notwithstanding the contradictory testimony, the following fact is not disputed: On February 7, 2008, the Claimant did not show up for work at 8:00 a.m., the time her shift was to start.

3. Claimant's Division case worker testified at hearing that Claimant called him on February 25, 2008, and told him she had been laid off from her job. Claimant informed her caseworker she had already turned in a form from her employer. The case worker called the employer, who told him she terminated Claimant because Claimant was gossiping with the clients, was not willing to work the hours required, and did not call or show up for work one day. (Testimony of [REDACTED]).

4. The employer, Ms. [REDACTED] testified she hired Claimant to start work on January 11, 2008. The employer further stated she was waiting for a background check with the State of Alaska, while Claimant was working. According to the employer, on February 7, 2008, Claimant failed to appear for her scheduled work day, which was to start at 8:00 a.m. At 9:00 a.m. the employer called another staff member. The employer assumed Claimant had quit, and therefore, gave Claimant's hours to someone else. At 9:45 p.m., Claimant called the employer. Claimant told the employer she was at the hospital that day. During that phone call, the employer told Claimant she had assumed Claimant had quit and therefore had given her hours to someone else. The employer also told Claimant she no longer had any hours for Claimant to work, but when the Claimant's background check was complete, she could resume work if there was an opening. (Testimony of Ms. [REDACTED], the employer).

5. Claimant testified she called the employer at 9:30 a.m. on February 7, 2008, and left a message stating she was at the hospital, but would come in if she was still needed. At 9:45 p.m. that night, the employer called Claimant and told her she was not needed anymore. (Testimony of Claimant).

6. [REDACTED], Claimant's friend, testified regarding events surrounding February 7, 2008. She stated she and the Claimant had "been hanging out that day." They began their day together early in the morning. Claimant was supposed to work that day, but a woman called early and told Claimant she wasn't needed. She did not remember anything about a hospital. (Testimony of [REDACTED]).

7. The Claimant submitted an Employment Statement to the Division on February 22, 2008. The employer testified at hearing she had not completed or signed that form. The document stated the reason for Claimant's termination was "contract terminated." The signature is difficult to read, but the first initial is [REDACTED], the second name appears to start with an "[REDACTED]" and the last two letters are [REDACTED] and [REDACTED]. This is not the proper spelling of employer's name. The Claimant's phone number is listed as the employer's phone number. (Ex. 2.1).

8. [REDACTED], from Nine Star Education and Employment Services also testified. Ms. [REDACTED] testified primarily from a review of her notes. She understood on February 22, 2008, the Claimant's hours were decreasing. By February 26, 2008, Ms. [REDACTED] had in her notes that

the Claimant was looking for other employment. Ms. [REDACTED] emailed the Claimant's caseworker on March 21, 2008 regarding the Claimant's termination. (Ex. A). It is unclear when Ms. [REDACTED] learned of the Claimant's termination. Ms. [REDACTED] received all her information from the Claimant, and never contacted the employer. (Testimony of [REDACTED]).

9. The record was left open in this case in order for the Claimant to provide documentation regarding the February 7, 2008 hospital visit to substantiate her testimony. The Claimant failed to submit any documentation.

PRINCIPLES OF LAW

The issue in this matter involves imposition of a job quit penalty resulting in imposition of a penalty to the Claimant's Temporary Assistance benefits. The party wishing to change the status quo has the burden of proof. In this case, the Claimant was receiving Temporary Assistance benefits and the Division sent her notice it intended to impose a one month job quit penalty. Accordingly, the Division has the burden of proof by a preponderance of the evidence.¹

The Division is required to impose a penalty upon the household receiving Temporary Assistance if the adult applicant voluntarily separates from employment and this voluntary separation is without good cause. AS 47.27.015(c).

Alaska Temporary Assistance regulation 7 AAC 45.990(b) more specifically defines "voluntary separation." The regulation defines "voluntary separation" in pertinent part as follows:

- (1) voluntary termination of employment by an employee; . . .
- (3) failure of an employee to show up for work as scheduled.

Alaska regulation 7 AAC 45.970(e) requires the Division to consider termination from employment as a voluntary separation without good cause when the termination is caused by "action or inaction within the individual's control" and to enforce a period of ineligibility specified in AS 47.27.015(c).

Good cause is defined in 7 AAC 45.261. 7 AAC 45.261(a) sets forth eighteen possibilities that would constitute good cause. 7 AAC 45.261(a) states the following circumstances may constitute good cause:

- (4) a sudden and temporary situation beyond the control of the family, affecting health of a member or ability to comply, including family illness or death or tragedies of nature; . . .

¹¹ Amerada Hess Pipeline v. Alaska Public Utilities Comm'n, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). Preponderance of the evidence is evidence which as a whole shows the fact sought to be proved is more probable than not.

(10) the recipient is separated from paid employment for a reason outside the recipient's control and not due to the recipient's action or inaction.

Alaska Statute 47.27.015(c) defines the ineligibility period for a first separation without good cause as one month. The period of ineligibility begins on the first of the month following the Division's timely notice of action and runs uninterrupted until the period expires. 7 AAC 45.970(d).

ANALYSIS

The Division has the burden of proof to show the Claimant either, left her employment voluntarily and did not have good cause, or left her involuntarily. A credibility determination must be made between the Claimant and the employer. Both have internal inconsistencies in their statements. However, one fact is consistent: The Claimant failed to show up for work as scheduled on February 7, 2008. A person's failure to show for work as scheduled is considered a "voluntary separation" if there is not good cause. 7 AAC 45.990(b).

The question then turns to whether Claimant had good cause for her failure to show up for work on February 7, 2008. She testified she was at the hospital. However, this testimony is not credible. She was given an opportunity to provide evidence regarding the hospital visit. She failed to do so. Her friend testified she was with the Claimant the entire day of February 7, 2008, and did not know anything about a hospital visit, a direct contradiction to Claimant's testimony. Furthermore, Claimant demonstrated her lack of credibility by submitting a forged Employer's Statement to the Division. Based on the evidence submitted, Claimant has failed to demonstrate she was at the hospital on the morning of February 7, 2008.

Claimant has not provided any other reason for her failure to show. Since her claim of a hospital visit is not credible, and she has not provided any other reason for her failure to show, she has not demonstrated she had good cause for her failure to show up for work on February 7, 2008. 7 AAC 45.261(a) Therefore, her failure to show was a "voluntary separation" without good cause. 7 AAC 45.990(b) Because Claimant had a voluntary separation from employment, the Division was correct to impose a job quit penalty. AS 47.27.015(c)

CONCLUSIONS OF LAW

1. The Claimant's failure to show up for work as scheduled on February 7, 2008 was voluntary separation without good cause.
2. Because Claimant had a voluntary separation from employment, the Division was correct to impose a job quit penalty.

DECISION

The Division was correct to consider the Claimant voluntarily quit her employment.

The Division was correct to have imposed a first job quit penalty on the Claimant's household.

This decision is supported by the above mentioned citations as well as AS 47.27.015(c); 7 AAC 45.970(e); 7 AAC 49 et seq.

APPEAL RIGHTS

If the Claimant is dissatisfied with this decision for any reason, the Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director, Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

If the Claimant appeals, the Claimant must send the request within 15 days from the date the Claimant receives this letter. Filing an appeal with the Director could result in the reversal of the Hearing Authority's decision.

Dated: June _____, 2008.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ____ day of June, 2008,
true and correct copies of the foregoing were
sent to:

Claimant – Certified Mail, Return Receipt Requested.

_____, Director
_____, Policy & Program Development
_____, Staff Development & Training
_____, Fair Hearing Representative

Al Levitre, Law Office Assistant I