Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Phone: (907) 334-2239
Fax: (907) 334-2285

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

In The Matter Of:	)	
	)	
[redacted],	)	OHA Case No. 10-FH-389
	)	
Claimant.	)	DPA Case No. [redacted]
	)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[redacted] (Claimant) has received benefits pursuant to the Alaska Temporary Assistance Program (ATAP) since at least December 8, 2009 (Ex. 3.2). On November 9, 2010 the State of Alaska Division of Public Assistance (DPA or Division) mailed a notice to the Claimant stating that his ATAP case would end on (or after) November 30, 2010, and that a six month "job quit penalty" had been assessed, based on his termination of employment with a restaurant (Ex. 4). On November 22, 2010 the Claimant faxed a written hearing request to the Division (Exs. 7, 7.2).

This Office has jurisdiction to resolve this dispute pursuant to 7 AAC 49.010.

The Claimant's hearing was originally scheduled for December 22, 2010 (DPA Fair Hearing Position Statement). However, on December 20, 2010 the Claimant contacted the Division and requested that his hearing be postponed. The Division postponed the Claimant's hearing to January 12, 2011.

On January 11, 2011 the Claimant again contacted the Division and requested that his hearing be postponed a second time. The Division postponed the Claimant's hearing to January 26, 2011.

On January 25, 2011 the Claimant again contacted the Division and requested that his hearing be postponed a third time. The Division opposed the Claimant's postponement request. On January 26, 2011 the Office of Hearings and Appeals (OHA or Office) issued an order postponing the Claimant's hearing to February 23, 2011. The order stated that no further continuances would be granted absent compelling circumstances.

Over the weekend of February 12-13, 2011 the Claimant left a message on OHA's voice mail stating that he would sue OHA if his job quit penalty was not lifted.

On the morning of February 23, 2011 the Claimant and/or his wife contacted OHA and requested that the hearing, scheduled for that afternoon, be postponed a fourth time. Due to the timing of the Claimant's postponement request, this Office was not able to address it prior to the hearing.

At the time scheduled for the hearing on February 23, 2011 this Office went on-record and contacted the Claimant, (who lived in Soldotna, Alaska), by phone. Present in the hearing room were Hearing Examiner Jay Durych, conducting the hearing, and Public Assistance Analyst [redacted], the Division's Hearing Representative. The Claimant's wife answered the phone, stated that her husband was sick, and requested that the hearing be postponed. The reasons stated by the Claimant's wife in support of the continuance request were that (1) her husband was sick to his stomach because of anxiety about the hearing and therefore could not represent himself; (2) her husband wanted an attorney and had not yet been able to retain one; (3) her husband wanted to obtain testimony from a witness who had moved out-of-state, but her husband had not yet been able to contact that individual; and (4) her husband wanted to attend the hearing in person, but they had transportation problems and could not get to Anchorage.

The Division opposed the Claimant's continuance request based on the number of prior continuances and the inconvenience to the Division's witnesses which another postponement would cause. This Office denied the request for continuance, noting that the Claimant had three (3) months since he had requested a hearing in which to (1) obtain an attorney, (2) contact necessary witnesses, and (3) arrange transportation to Anchorage.

The Claimant's wife then stated that *they were not really in Soldotna but were in Anchorage*, and that they could be at the hearing in person within 10 minutes. Accordingly, the hearing was recessed in order to allow the Claimant to attend the hearing in person.

When the Claimant and his wife and child arrived for the hearing, the Claimant stated that he was going to be sick. He went to the hearing room sink, and there were sounds indicating that the Claimant was retching. This Office concluded that it would not be possible to conduct a hearing properly under those circumstances and ordered that the hearing be postponed. On February 24, 2011 an order was issued postponing the Claimant's hearing to March 30, 2011.

This Office's order dated February 24, 2011 required that the parties file any additional exhibits with this Office by March 18, 2011. The Claimant did not file any new exhibits by that date. However, on March 27, 2011, less than four days before the hearing, the Claimant began faxing numerous exhibits and motions to this Office. The Claimant's faxes continued through March 30, 2011 and totaled approximately 95 pages (Exs. F-1 through Y-4). This material consisted primarily of the following:

> Documentation concerning the Claimant's medical problems and his wife's medical problems (Exs. F-1 through J-6).

Documentation pertaining to the Claimant's assertion that his wife was unable to assist in representing him due to her medical problems (Exs. K-1 through K-6).

Documentation pertaining to the Claimant's assertion that he was unable to represent himself at his hearing due to his anxiety and related problems (Exs. L-1 through L-7).

Letters from Alaska Legal Services Corporation, the American Civil Liberties Union, and the Alaska Bar Association's Pro Bono Program, documenting that the Claimant had sought legal representation but had been declined (Exs. M-1 through M-6).

Documentation which the Claimant asserted was relevant to his request to admit his late-filed exhibits (Exs. N-1 through P-6).

Argument that the OHA Hearing Officer and the DPA Hearing Representative assigned to the Claimant's case should be disqualified for various reasons (Exs. Q-1 through R-1).

Correspondence between Claimant and the restaurant manager in which the Claimant sought to persuade the restaurant manager not to testify at his hearing (Exs. T-1 through U-4).

A motion to disqualify the OHA Hearing Officer assigned to the Claimant's case for various reasons (Exs. V-1 through W-1).

A motion to admit the Claimant's late-filed exhibits (Exs. W-2 through X-2).

All of this material was reviewed by the Hearing Examiner prior to the Claimant's hearing on March 30, 2011.

The Claimant's hearing began as scheduled on March 30, 2011 before Hearing Examiner Jay Durych. The Claimant participated by telephone, represented himself, and testified on his own behalf. Public Assistance Analyst [redacted], the Division's Hearing Representative, appeared in person to represent and testify on behalf of the Division. Prior to taking evidence this Office considered and ruled on the several motions which the Claimant had filed over the preceding three days. These motions, and this Office's rulings on those motions, were as follows:

1. Motion to Disqualify Hearing Officer – denied for reasons stated on the record.

2. Motion to Continue Hearing - denied for reasons stated on the record.

3. Motion to Admit the Claimant's Late-Filed Exhibits – granted for reasons stated on the record.

The hearing then proceeded on the merits. The Claimant completed his testimony, and the Division presented most of its case. However, by that time, (approximately 2.5 hours after the start of the hearing), the Division's last witness, [redacted], was no longer available. Accordingly, at the Division's request, and over the Claimant's objection, this Office ordered a

final hearing to be held solely for the taking of Ms. [redacted]'s testimony. On March 31, 2011 an order was issued by this Office scheduling that hearing for May 4, 2011.

On or about April 3, 2011 the Claimant left a message on this Office's voice mail in which he sought reconsideration of this Office's prior order scheduling a final hearing for the taking of Ms. [redacted]'s testimony. Because the Claimant's request was not presented in writing, or on-record during the hearing, it was not considered.

During the night of April 23-24, 2011 the Claimant left a message on this Office's voice mail in which, among other things, he requested that the hearing scheduled for May 4, 2011 be postponed. On April 25, 2011 the Division's Hearing Representative filed a letter with this Office opposing the Claimant's request to postpone the hearing. The Claimant's motion to postpone the hearing of May 4, 2011 was denied on April 27, 2011 for the reasons stated in the order.

The final hearing in this case was held as scheduled on May 4, 2011 before Hearing Examiner Jay Durych. [redacted], the Division's Hearing Representative, appeared in person to represent the Division. [redacted], Law Office Assistant for the Office of Hearings and Appeals, appeared briefly in person to testify regarding his telephone contact with the Claimant. [redacted] of DPA participated by phone and testified on behalf of the Division. The Claimant was not present and did not participate by phone.[1]

At the conclusion of the hearing the issue was raised as to whether the Claimant should be found to have abandoned his case, pursuant to 7 AAC 49.100(4), by failing to participate during the May 4th hearing. The matter was taken under advisement. On May 6, 2011 an order was issued allowing the parties to submit any post-hearing filings, relevant to the issue of abandonment, by May 13, 2011. On May 9, 2011 this Office received a letter from the Division in support of its request that the Claimant's hearing be considered abandoned pursuant to 7 AAC 49.100(4). No response was received from the Claimant. On May 13, 2011 this Office exercised its discretion to consider the case on its merits, declining to dismiss the case based on abandonment. On that date the record was closed and the case became ripe for decision.

ISSUE

Was the Division correct when, on November 9, 2010, it mailed a notice to the Claimant stating that his ATAP case would be closed after November 30, 2010, and that a six (6) month [2] job-quit penalty would then be imposed, based on the assertion that the Claimant had voluntarily terminated his employment without good cause?

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1 The Claimant had contacted this Office by phone prior to the hearing and had advised that he would not be participating in the hearing.

2 The Division's ATAP termination notice (Ex. 4) stated that the Claimant's job-quit penalty would last until May 31, 2011 (i.e. for six months). It was not disputed that another job-quit penalty had previously been imposed and that, if the job-quit penalty at issue in this case was proven by the Division, it would be the Claimant's second (2nd) job-quit penalty.

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The Claimant has received benefits pursuant to the Alaska Temporary Assistance Program (ATAP) since at least December 8, 2009 (Ex. 3.2). The Claimant's household consists of three persons: the Claimant, his wife, and their one year old child (Ex. 1).

2. On January 22, 2010 DPA mailed a notice to the Claimant advising that his December 8, 2009 ATAP application had been approved, but that a first-time, one month job quit penalty had been imposed (Ex. 3.2). This was the first ATAP job-quit penalty assessed against the Claimant and preceded the job-quit penalty at issue in this case.

3. On Wednesday, November 3, 2010 at 2:00 p.m. the Claimant interviewed for a "prep cook" [3] position with [redacted]'s Restaurant ("the restaurant") (Ex. 12). The interviewers were [redacted] and [redacted], the owners of the restaurant, and [redacted], manager of the restaurant. *Id.* The details of the prep cook position were explained to the Claimant. *Id.* The Claimant was told that he would work 30-35 hours per week; that he would be paid $7.75 per hour to start; and that he would receive a pay increase after two weeks if his performance was satisfactory. *Id.* The Claimant did not advise the interviewers that he required any special accommodations, as a result of any medical problems, in order to perform the duties of the prep cook position. *Id.* The Claimant was offered the prep cook position and agreed to accept the position. *Id.* He was given several "new hire" forms to complete. *Id.*

4. On November 3, 2010 the Claimant worked for the restaurant for 7.25 hours (Ex. 12). The next day (November 4, 2010) the Claimant faxed a letter to the Division confirming that he had been hired by the restaurant the day before (Ex. 2). The Claimant's letter stated in relevant part that "*I was hired-on by [redacted]'s in [redacted] at 2:00 p.m. yesterday*" [emphasis added].

5. On Friday, November 5, 2010 the Claimant called the restaurant and stated that something had come up and that he was no longer able to work (Ex. 12).

6. The Claimant never returned his "new hire" forms to the restaurant (Ex. 12.1). The restaurant needed the "new hire" forms to issue the Claimant's paycheck. *Id.* Because the Claimant did not return the necessary forms, the restaurant was unable to pay the Claimant for the 7.5 hours that he worked on November 3, 2010 (Ex. 12.1).

7. On Monday, November 8, 2010 DPA received information indicating that the Claimant had quit his job at the restaurant (Ex. 3.0). DPA contacted the restaurant manager by phone to

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[3] Prep cooks don't do much actual cooking; instead, they are responsible for ensuring that chefs have the necessary ingredients at hand. *See* online trade publication http://degreedirectory.org/articles/How_Do_I_Become_a_Prep_Cook.html (date accessed June 22, 2011). Prep cooks also help with serving and cleaning duties. *Id.* As a prep cook, one would be responsible for everything from chopping vegetables to sweeping dining room floors. *Id.* A typical day's duties might include: checking the temperature of refrigerated foods, preparing salads, straining soups, placing prepared foods onto plates, pre-measuring ingredients for chefs' use, filling dishwashers and alerting supervisors to low food quantities. *Id.*

confirm the job-quit. *Id.* She did so, and also stated that the Claimant did not give a reason for quitting. *Id.*

8. On November 9, 2010 the Division mailed a notice to the Claimant stating that his ATAP case had been closed due to his termination of employment with the restaurant (Ex. 4). The notice stated in relevant part as follows (original formatting modified here for brevity):

> Your family's [ATAP case] is closed because a member of your family quit or refused a job . . . . Your benefits will end 11/30/10. The situation that caused your case to close is explained below: [You were] offered a job at [the restaurant] . . . . You worked one day and then called and quit the job the next day.
>
> Since this is your second penalty, it will last until 05/31/11. Your family is not eligible to receive [ATAP benefits] until 06/01/2011 . . . . This action is based on Chapters 722 and 723 of the [ATAP] manual.

9. On or about November 11, 2010, and again on November 22, 2010, the Claimant faxed two letters to the Division (Exs. 5.1, 8.0, 8.1). The content of these letters can be summarized as follows: [4]

> The Claimant originally applied for an open food server position. He was told that the food server position had been filled, but that there was a kitchen helper / prep cook position available.
>
> The Claimant had anticipated, and arranged transportation for, the job interview. However, after the interview, he was immediately put to work in the restaurant, and had to call to cancel his ride home because he would be staying late to work.
>
> The Claimant was originally told that he would be performing the duties of *prep cook.* However, once he started working, he was told that he was expected to perform the duties of a "*bull cook*." [5] He does not have experience as, and/or is not qualified to perform, the duties of a bull cook. Trying to learn the duties of a bull cook would cause him stress, and stress would in turn cause his TMJ [6] to flare-up. The Claimant's TMJ prevents him from performing work which involves high stress or significant amounts of talking.

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[4] The Claimant's testimony at hearing was consistent with, and is adequately summarized by, the assertions made in these two letters.

[5] A typical "bull cook" is responsible for cold food preparation and basic cleanup. *See Bradbury v. Chugach Elec. Association*, 71 P.3d 901, 904 (Alaska 2003). As such, the typical duties of a bull cook do not appear to differ from the typical duties of a prep cook.

[6] "TMJ" refers to pain in the *temporomandibular joint* (TMJ). *See* http://www.mayoclinic.com/health/tmj-disorders/DS00355 (date accessed June 24, 2011). This is the joint on each side of the head in front of the ears, where the lower jawbone meets the skull. *Id.* TMJ disorders can be caused by many different types of problems including arthritis, jaw injury, or muscle fatigue from clenching or grinding the teeth. *Id.* In most cases, the pain and discomfort associated with TMJ disorders can be alleviated with self-managed care or nonsurgical treatments. *Id.* Severe TMJ disorders may need to be treated with dental or surgical interventions. *Id.*

> The Claimant was never asked if he would require any accommodations to perform his job duties. He never signed a W-4 or any other "new hire" paperwork. He was never paid for the work that he performed at the restaurant.

10. On November 15, 2010 the Division telephoned the restaurant manager with regard to the statements made in the Claimant's letter of November 11, 2010, discussed above. The information obtained by the Division during that phone call (Ex. 5) was summarized in a notice mailed to the Claimant on November 16, 2010 (Exs. 6, 7.1). That notice stated in relevant part as follows (original formatting modified here for brevity):

> The six month job quit penalty will begin 12/01/10. I spoke with [the manager of the restaurant] who explained . . . that you were interviewed by [her, the owner, and Tina], and that you were hired as a prep cook (not a bull cook) . . . . [The owner] took you back into the kitchen where he explained to you what your duties would be. She said that you agreed to them and that you worked 7.5 hours on 11/03/10. She said that she gave you the new hire packet to take home and fill out, but that you did not return the completed paperwork. We have no paperwork on file for you . . . [indicating] that you are medically unable to work . . . . At this time there is no change to your case. Your ATAP benefits will end on 11/30/10 and your penalty will begin on 12/01/10.

11. On November 22, 2010 the Claimant faxed a written hearing request to the Division (Exs. 7, 7.2). The Claimant requested that his ATAP benefits be continued pending the outcome of the hearing. *Id.*

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

This case involves the Division's termination of the Claimant's previously-existing ATAP benefits, and its assessment of a job-quit penalty. Ordinarily, the party seeking a change in the status quo has the burden of proof. *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). In this case, the Division is attempting to change the existing status quo by terminating the Claimant's ATAP benefits and by assessing a job-quit penalty. Accordingly, the Division bears the burden of proof in this case.

A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986). The regulations applicable to this case do not specify any particular standard of proof. Therefore, the "preponderance of the evidence" standard is the standard of proof applicable to this case. This standard is met when the evidence, taken as a whole, shows that the facts sought to be proved are more probable than not or more likely than not. Black's Law Dictionary at p. 1064 (West Publishing, 5th Edition, 1979).

II. The Alaska Temporary Assistance Program – In General.

The Temporary Aid to Needy Families (TANF) program was created by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pubic Law No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); 42 U.S.C. § 601 et seq. Under TANF, each state receives a set amount of federal funds to distribute as the state sees fit. 42 U.S.C.A. § 601 *et seq*.

The Alaska Temporary Assistance Program (ATAP) is a state program created to implement the federal TANF program in the state of Alaska. *See* A.S. § 47.05.010(1); A.S. § 47.27.005 – A.S. § 47.27.990. The Alaska Temporary Assistance Program's governing regulations are found in the Alaska Administrative Code at 7 AAC § 45.149 – 7 AAC § 45.990.

III. The Alaska Temporary Assistance Program – Work Requirements.

Alaska Statute (A.S.) § 47.27.005 provides in relevant part as follows

> The department shall . . . (2) establish, by regulation, program standards for incentives to work, incentives for financial planning, cash assistance, diversion payments, self-sufficiency services, and other opportunities to develop self-sufficiency . . . .

Alaska Statute (A.S.) § 47.27.015 provides in relevant part as follows:

> (c) A family is not eligible for cash assistance for the following time periods if the family's demonstrated need for cash assistance is due to a refusal of or voluntary separation from suitable employment by the adult applicant, or a custodial parent or caretaker, without good cause: (1) one month for the first refusal or separation without good cause; (2) six months for the second refusal or separation without good cause . . . .

ATAP regulation 7 AAC § 45.261 provides in relevant part as follows:

> (a) For the purposes of determining "good cause" under AS § 47.27.015(c) (refusal of or voluntary separation from suitable employment . . . 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 . . . .
> >
> > * * * * * * * * * * *
> >
> > (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 . . . .

ATAP regulation 7 AAC § 45.970, titled 'Penalties for Refusal or Voluntary Termination of Employment," provides in relevant part as follows:

> (e) If [DPA] determines that an individual's termination from suitable employment was caused by action or inaction within the individual's control, the department will consider the termination as a voluntary separation under AS 47.25.015, and [DPA] will enforce the period of ineligibility specified in AS 47.27.015(c).

ATAP regulation 7 AAC § 45.990, titled "Definitions", provides in relevant part as follows:

> (b) In AS §47.27.015, "voluntary separation" means (1) voluntary termination of employment by an employee; (2) intentional misconduct by an employee on the job, causing the employer to terminate the employment; or (3) failure of an employee to show up for work as scheduled.

ANALYSIS

Introduction; Definition of Issues.

The statute pertinent to this case, Alaska Statute § 47.27.015(c), provides in relevant part that "a family is not eligible for cash assistance . . . if the family's demonstrated need for cash assistance is due to a refusal of or *voluntary separation from suitable employment* by the adult applicant, or a custodial parent or caretaker, *without good cause* . . . ." (Emphasis added).

Accordingly, in order for the Division to impose a job-quit penalty in this case, A.S. § 47.27.015(c) requires that the Division demonstrate (1) that the Claimant was employed; (2) that his employment was "suitable;" (3) that he voluntarily quit his job; and (4) that he had no good reason to quit his job. Each of these four elements will be addressed separately below in the order stated. Because the Division is seeking to change the status quo by terminating the Claimant's benefits, the Division bears the burden of proving each of the four elements by a preponderance of the evidence (*see* discussion in Principles of Law at 7, above).

I. Was the Claimant Actually *Employed* at the Restaurant?

The Claimant's primary argument is that he was never "officially" hired by [redacted]'s Restaurant. *See* Exs. 5.1, 8.0, 8.1, and Claimant testimony. He asserts that, because he never signed and returned the IRS Form W-4 and the other "new hire" forms given to him, the hiring process was never completed and he never became an employee. *Id.* He further reasons that, because he never became an employee, he could not possibly have terminated any employment. *Id.* Finally, because (he argues) he did not terminate any employment, no job-quit penalty can be assessed against him. *Id.*

The Claimant's deductive reasoning is valid – the Division cannot impose a job penalty unless the Claimant actually quit a job. However, the Claimant's initial premise – that he was never hired by the restaurant – is not supported by the evidence.

Initially, the Claimant's assertions regarding matters material to this case, made both in his written communications and in his hearing testimony, were almost entirely self-serving and were not supported by other credible evidence in the record. The owners and the manager of the restaurant all told the Division that on November 3, 2010 the Claimant was offered the prep cook position and he agreed to accept that position (Ex. 12). Neither the owners of the restaurant nor the manager of the restaurant have anything to gain by providing false information to the Division with regard to this matter. Accordingly, the information provided by the owners and manager of the restaurant – that the Claimant was in fact hired – must be accepted as credible.

The best evidence of the Claimant's hire status, however, comes from the Claimant himself. On November 4, 2010 *the Claimant himself* faxed a letter to the Division *confirming that he had been hired by the restaurant the day before* (Ex. 2). The Claimant's letter stated in relevant part that "*I was hired-on by [redacted]'s in [redacted] at 2:00 p.m. yesterday*" [emphasis added]. In addition, the Claimant worked 7.5 hours on the day he was hired, on November 3, 2010. *See* finding of fact 4. (Ex. 12). The Claimant also called the restaurant on November 5, 2010 and stated that he was no longer able to work (Ex. 12). It was only *after* the Claimant quit the job – when the Division contacted the Claimant regarding imposition of a job-quit penalty – that the Claimant took the position that he had never been hired.

In summary, a preponderance of the evidence, (including the Claimant's own written statement), demonstrates that the Claimant was hired and had begun working for the restaurant on November 3, 2010. Accordingly, the Division has satisfied the first of the four elements required to impose a job-quit penalty pursuant to A.S. § 47.27.015(c).

II. Was the Claimant's Employment at the Restaurant *Suitable*?

The Claimant also asserted that the prep cook position at issue was not suitable for him. *See* the Claimant's letters to the Division at Exs. 5.1, 8.0, 8.1; *see also* Claimant hearing testimony. He asserts that he was originally told that he would be performing the duties of *prep cook*, but that, once he started working, it was clear that he was expected to perform the duties of a "*bull cook*." *Id.* He asserts that he does not have experience as, and/or is not qualified to perform, the duties of a bull cook; that trying to learn the additional duties of a bull cook would cause him stress; and that stress would in turn cause his TMJ to flare-up, causing him significant pain. *Id.*

The record indicates that the Claimant has suffered from TMJ in the past, and that TMJ can be caused by stress (Exs. H-2, H-3). However, the Claimant provided no evidence to support his assertion that the restaurant position for which he was hired was a "bull cook" position (as opposed to a "prep cook" position), and/or that a "bull cook" position is more stressful than a "prep cook" position. Trade publications indicate that the two positions are basically equivalent and that, if anything, a 'bull cook" position is a less-skilled, less-stressful position than a "prep cook" position. *See* footnotes 2 and 4, above.

In addition, there is no evidence in the record to indicate that the Claimant was in any pain following the completion of his initial 7.5 hours of duty on November 3, 2010. Presumably, if he had been assigned more stressful duties on that date, his TMJ would have flared, and he would

have reported this. However, the Claimant made no mention of this when he called the restaurant on November 5, 2010 and stated that he was no longer able to work (Ex. 12).

In summary, there is no reliable evidence in the record indicating that the Claimant's cook position – whether termed a "prep cook" position or a "bull cook" position - was not suitable for him. Accordingly, the Division has satisfied the second of the four elements required to impose a job-quit penalty pursuant to A.S. § 47.27.015(c).

III. Was the Claimant's Separation from His Employment *Voluntary*?

The third of the four elements required to impose a job-quit penalty pursuant to A.S. § 47.27.015(c) is whether the separation from employment was *voluntary*. ATAP regulation 7 AAC § 45.990(b)(1) defines "voluntary separation" for purposes of AS §47.27.015 as "voluntary termination of employment by an employee."

On November 5, 2010 the Claimant telephoned the restaurant and stated that something had come up and that he was no longer able to work (Ex. 12). On its face, there is nothing in this statement to indicate that the Claimant's decision to quit his new job was not voluntary. [7]

After learning that the Division intended to impose a job-quit penalty, the Claimant asserted that he was essentially forced to quit his job because trying to learn the additional duties of a bull cook would cause him stress, and that stress would in turn cause his TMJ to flare-up, causing him significant pain. However, as discussed in Section II, above, there is no reliable evidence in the record indicating that the Claimant's cook position – whether termed a "prep cook" position or a "bull cook" position – had actually caused the Claimant significant stress or pain, during his first and only day on the job, so as to medically justify the termination of his employment.

In summary, there is no reliable evidence in the record indicating that the Claimant's self-termination of his employment was not voluntary. Accordingly, the Division has satisfied the third of the four elements required to impose a job-quit penalty pursuant to A.S. § 47.27.015(c).

IV. Did the Claimant Have *Good Cause* to Voluntarily Terminate Suitable Employment?

As demonstrated above, the Claimant voluntarily terminated suitable employment. Accordingly, the only remaining issue is whether the Claimant had good cause to terminate his employment pursuant to A.S. 47.27.015(c).

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[7] Black's Law Dictionary (West Publishing Co., 5th Edition, 1979) defines "voluntarily" as "[d]one by design or intention, intentional, proposed, intended, or not accidental . . . . Intentionally and without coercion." Cambridge University's online dictionary defines "voluntary" as "done, made or given willingly, without being forced or paid to do it." *See* http://dictionary.cambridge.org/dictionary/british/voluntary (date accessed June 27, 2011). Webster's online dictionary defines "voluntary" as "proceeding from the will or from one's own choice or consent . . . unconstrained by interference . . . done by design or intention . . . of, relating to, subject to, or regulated by the will . . . ." *See* http://www.merriam-webster.com/dictionary/voluntary. Collins English Dictionary (Harper Collins 2003) defines "voluntary" as "performed, undertaken, or brought about by free choice, willingly, or without being asked."

7 AAC 45.261(a) defines "good cause" for purposes of the ATAP program. The only subsections of the regulation that could potentially apply to this case are subsections (4) and (10). Those subsections provide in relevant part as follows:

> For the purposes of determining "good cause" under AS 47.27.015(c) (refusal of or voluntary separation from suitable employment) . . . 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 . . . . (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 . . . .

After learning that the Division intended to impose a job-quit penalty, the Claimant asserted that he had good cause to quit his job because trying to learn the additional duties of a bull cook would cause him stress, and that stress would in turn cause his TMJ to flare-up, causing him significant pain. However, as discussed in Sections II and III, above, there is no reliable evidence in the record indicating that the Claimant's cook position – whether termed a "prep cook" position or a "bull cook" position – had actually caused the Claimant significant stress or pain, during his first and only day on the job, so as to provide medical justification or "good cause" for terminating his employment.

In summary, there is no reliable evidence in the record demonstrating good cause for the Claimant's termination of his employment. Accordingly, the Division has satisfied the last of the four elements required to impose a job-quit penalty pursuant to A.S. § 47.27.015(c).

V. Summary – Claimant Voluntarily Terminated Suitable Employment Without Good Cause.

In summary, the Division has satisfied its burden of proof. It has proven, by a preponderance of the evidence, that the Claimant voluntarily terminated suitable employment at the restaurant without good cause to do so. This justified the Division's imposition of a job-quit penalty pursuant to A.S. § 47.27.015(c), 7 AAC § 45.261, 7 AAC § 45.970(e), and 7 AAC § 45.990. Accordingly, the Division was correct when, on November 9, 2010, it mailed a notice to the Claimant stating that his ATAP case would be closed after November 30, 2010, and that a six (6) month job-quit penalty would then be imposed, because the Claimant voluntarily terminated suitable employment without good cause.

CONCLUSIONS OF LAW

1. The Division carried its burden and proved, by a preponderance of the evidence, that on November 5, 2010 the Claimant voluntarily terminated suitable employment at the restaurant at issue without good cause to do so.

2. Because the Claimant voluntarily terminated suitable employment at the restaurant at issue without good cause to do so, his family is not eligible for participation in the Alaska Temporary Assistance Program pursuant to A.S. § 47.27.015(c), 7 AAC § 45.261, 7 AAC § 45.970(e), and 7 AAC § 45.990.

DECISION

The Division was correct when, on November 9, 2010, it mailed a notice to the Claimant stating that his Alaska Temporary Assistance Program case would be closed after November 30, 2010, and that a six (6) month job-quit penalty would then be imposed, because the Claimant voluntarily terminated suitable employment without good cause.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. *If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision.* Filing an appeal with the Director could result in the reversal of this Decision. To appeal, send a written request directly to:

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

DATED this 29th day of June, 2011.

(signed)
_____
Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on June 29, 2011 true and correct copies of the foregoing document were sent to the Claimant via USPS mail, and to the remainder of the service list by secure / encrypted e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

[redacted], DPA Hearing Representative
[redacted], DPA Hearing Representative
[redacted], Policy & Program Development
[redacted], Staff Development & Training
[redacted], Administrative Assistant II
[redacted], Eligibility Technician I

(signed)
By:_____
J. Albert Levitre, Jr.
Law Office Assistant I