

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-253  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Mr. [REDACTED] (Claimant) applied for recertification of his Food Stamp benefits on July 7, 2010, which application the Division of Public Assistance (Division) received on July 8, 2010. (Ex. 2-2.5) On July 27, 2010, Claimant engaged in a telephonic eligibility interview during which Claimant and the Division's Eligibility Technician disagreed whether Claimant had voluntarily quit his employment with [REDACTED] Landscaping. (Ex. 3-3.1) On July 28, 2010, the Division sent Claimant written notice it denied his July 7, 2010 application for recertification because it determined he had quit his job by abandoning it. (Ex. 4) Claimant requested a fair hearing on July 29, 2010. (Ex. 5-5.1)

This office has jurisdiction pursuant to 7 AAC 49.010.

Claimant's Fair Hearing was held on September 2, 2010. Claimant attended the hearing in person, represented himself and testified on his own behalf. Claimant called two witnesses, Mr. [REDACTED] and Mrs. [REDACTED], each of whom appeared telephonically and testified on Claimant's behalf. Mr. [REDACTED], Public Assistance Analyst with the Division, attended in person, represented the Division and testified on its behalf. All exhibits submitted were admitted.

**ISSUE**

Was the Division correct, on July 28, 2010, to deny Claimant's July 7, 2010 application for recertification of eligibility for Food Stamp benefits because it imposed a job quit penalty on grounds Claimant voluntarily quit his job at [REDACTED] Landscaping?

## FINDINGS OF FACT

The following facts have been proven by a preponderance of the evidence:

1. Claimant applied for continuing Food Stamp benefits on July 7, 2010 by completing and signing an Eligibility Review Form (application for recertification).<sup>1</sup> (Ex. 2-2.5) The Division of Public Assistance (Division) received this application for recertification on July 8, 2010. (Ex. 2)
2. On July 27, 2010, Claimant engaged in a telephonic eligibility interview. (Ex. 3) During the interview, Claimant and the Eligibility Technician discussed an Employment Statement which Claimant had provided in support of his recertification application. (Ex. 3.1; Hearing Representative's testimony) This Employment Statement had been completed by Claimant's former employer, Mr. [REDACTED], co-owner of [REDACTED] Landscaping ([REDACTED]) who identified the reason for Claimant's termination of employment as "Quit." (Ex. 3.1; Claimant's testimony) Claimant disagreed with this reason for termination. (Ex. 3; Claimant's testimony) The Employment Statement showed Claimant received his last pay check on July 9, 2010 for a pay period ending July 3, 2010 but did not show a termination date.<sup>2</sup> (Ex. 3.1)
3. On July 27, 2010, the Eligibility Technician called the employer's telephone number and made written notes of her conversation with co-owner "[REDACTED]" in a case note dated July 27, 2010. (Ex. 3; Hearing Representative's testimony) In this July 27, 2010 case note, the Eligibility Technician wrote that Claimant and the other of the two co-owners of the business had a disagreement and Claimant was asked to leave that day and "cool off." (Ex. 3) The Eligibility Technician further wrote that Claimant later called owner "[REDACTED]" and was asked to come to a meeting and that Claimant did not show up for the meeting or at the two other times for which the meeting was re-scheduled. (Ex. 3) The Eligibility Technician concluded her notes by writing that when the Department of Labor contacted the employer about Claimant's application for unemployment benefits, the employer decided Claimant had "quit by not showing up for his scheduled meetings."<sup>3</sup> (Ex. 3) The Eligibility Technician decided a job quit penalty should be imposed. (Ex. 3)
4. On July 28, 2010, the Division of Public Assistance sent the Claimant written notice it denied his July 7, 2010 application for recertification because it determined he had quit his job

---

<sup>1</sup> Claimant's prior certification would expire July 31, 2010: Claimant applied for continued benefits on July 7, 2010 and was given notice of the job quit penalty and denial of ineligibility on July 28, 2010. (Hearing Representative's testimony)

<sup>2</sup> The form leaves blank the date of termination. (Ex. 3.1) On his application for recertification, Claimant wrote "unemployed on July 5, 2010." (Ex. 2.1) At the hearing, the parties stipulated July 2, 2010 would be the date of termination of employment. (Claimant's testimony; Hearing Representative's testimony)

<sup>3</sup> As of September 2, 2010, the Department of Labor records showed Claimant ineligible for unemployment benefits because of "job quit." (Ex. 10) The Department of Labor's characterization as a job quit has been appealed by Claimant. (Claimant's testimony)

by abandoning it. (Ex. 4) It imposed a penalty, telling Claimant he could re-apply after August 31, 2010. (Ex. 4) The notice expressly states:

[t]he employer states that you were asked to leave to cool down, but that you were later (after you contacted [REDACTED] about a disagreement) scheduled several times to come in and discuss the issue, since you chose not to show up for these meetings, they feel you abandoned your position....” (Ex. 4)

5. Claimant was employed by [REDACTED] Landscaping ([REDACTED]) between about May 20, 2010 until July 2, 2010. (Ex. A; Ex. 3.1; Claimant’s testimony) The following facts describe Claimant’s work circumstances at [REDACTED].

a. [REDACTED] is co-owned and co-operated by [REDACTED], President, and [REDACTED], Mr. [REDACTED], Vice-President. (Claimant’s testimony)

b. Claimant worked exclusively under the supervision of [REDACTED], who is the hiring manager of the business. (Claimant’s testimony)

d. Claimant’s job duties included;

1. billing [REDACTED]’s lawn care clients;
2. finalizing 4-6 crew workers’ time cards as to wages and commissions (per yard cut) to be paid, which he submitted to [REDACTED] for payment;
3. ensuring documents and information (such as federal I-9 forms, driver’s licenses and social security numbers) needed for lawful employment was acquired for the workers he supervised;
4. supervising and scheduling the lawn cutting crews, and filling in when a crew worker failed to show up for work.

(Claimant’s testimony)

e. In the course of doing his work, Claimant became aware, as a result of noticing adjustments to the worker’s time cards, that [REDACTED] was paying some of the workers, whom Claimant supervised, wage amounts different than the amounts Claimant had calculated the workers were due. Claimant believed the changes made to the time cards resulted in such great underpayment of some workers that [REDACTED] was not adhering to the minimum wage law. Claimant also believed the changes to the time cards resulted in worker confusion as to how much they were earning. Claimant discussed his perception the business was failing to abide by the law with his supervisor, [REDACTED], who disagreed with him about it. (Claimant’s testimony)

f. Also, in the course of doing his work, Claimant was asked to ensure that a particular worker provide documentation required by law to allow payment of wages to a lawful immigrant, including a completed I-9 form. The worker failed to cooperate for at least six weeks. When Claimant informed the co-owners of [REDACTED] he was unable to obtain the needed documentation and therefore

believed the worker would have to be fired, Mr. [REDACTED] told him not to fire the worker because he was a worker needed by [REDACTED] and because if he was fired, the worker might seek unemployment benefits. (Claimant's testimony)

g. Claimant became uncomfortable with what he interpreted to be "sketchy" business practices of [REDACTED] and had discussions with [REDACTED] about them. His discussions were not well received by her. On occasion, Claimant would have discussions with Mr. [REDACTED] and/or [REDACTED], and relied on Mr. [REDACTED] to intercede on his behalf when [REDACTED] disagreed with Claimant. (Claimant's testimony)

6. [REDACTED] terminated Claimant's employment with [REDACTED] on July 2, 2010. This finding is based on the following facts:

a. On July 2, 2010, Claimant was not scheduled to work but went to Sunshine to get his pay check. After Claimant arrived, his supervisor, [REDACTED] intercepted him by moving between him and his desk and angrily spoke to Claimant about their disagreement over [REDACTED]'s billing practices. (Claimant's testimony)

b. During her diatribe, [REDACTED] used foul language (f\_ \_k and versions thereof) repeatedly while complaining that Claimant "screwed up her \_\_ money", the company would go broke, the company would be underpaid by its clientele, and accused Claimant of "f\_ \_king up the company." The diatribe ended when [REDACTED] told Claimant to "[g]et the f\_ \_k out of here and don't ever come back." (Claimant's testimony)

c. Claimant understood this language to mean he had been fired. (Claimant's testimony)

d. Later on July 2, 2010, Claimant telephoned Mr. [REDACTED] to see if he could get his job back. Mr. [REDACTED] told Claimant to wait until he had talked with [REDACTED]. Mr. [REDACTED] suggested a meeting to discuss the situation but Claimant did not attend any meetings with Mr. or [REDACTED] after July 2, 2010. (Ex. 3; Claimant's testimony)

e. At some time between July 2, 2010 and July 9, 2010, [REDACTED] called Claimant's home telephone number and left a message that she would call back.<sup>4</sup> ([REDACTED]'s testimony) Her voice sounded angry. ([REDACTED]'s testimony)

f. On July 9, 2010, [REDACTED] called Claimant's home telephone number and spoke to [REDACTED] and [REDACTED] (via speakerphone). [REDACTED]'s call was a lengthy monologue in an "extremely belligerent," "off the wall wild" tone during which she was "screaming and yelling at us" apparently wanting "to make sure that we knew that if he showed up at that place of business again she would call the police and press charges." ([REDACTED]) [REDACTED] repeatedly stated Claimant caused all sorts of problems and that Claimant was trying to defame the company. ([REDACTED])

---

<sup>4</sup> Claimant shares a household with [REDACTED].

g. During the July 9, 2010 call, [REDACTED] “definitely” wanted the [REDACTED] to know that Claimant had been fired and that he was not welcomed there. ([REDACTED]) [REDACTED] said Claimant “was talking about reporting illegals working for her and that it was not true, it was a lie.” ([REDACTED])

h. During the July 9, 2010 telephone call, [REDACTED] appeared to want the [REDACTED]<sup>5</sup> to stop Claimant “from doing anything that might threaten the business because he had information concerning the business that might injure them. They were trying to get us to stop him from doing anything about business practices they were not adhering to.” ([REDACTED]) “She went into ... people working who shouldn’t be working, I-9, issues of salary wages for another employee, a bunch of stuff.” ([REDACTED]) [REDACTED] “perceived” Claimant as “a threat to go to Labor Board to report them on bad practices and salary - wage issues.” ([REDACTED])

## PRINCIPLES OF LAW

### I. Burden of Proof

Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

### II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof is the preponderance of the evidence.

Preponderance of the evidence is defined as follows:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

*Black’s Law Dictionary* 1064 (5<sup>th</sup> Ed. 1979)

### III. Food Stamp Program

The Code of Federal Regulations at 7 CFR § 273.7 govern the work requirements applicable to persons applying for and receiving Food Stamp benefits. Regulation 7 CFR § 273.7(a)(1)(vii) provides that a condition of eligibility for Food Stamp benefits is that an applicant or participant not “voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week, in accordance with paragraph (j) of this

---

<sup>5</sup> [REDACTED] confirmed that she was talking with Claimant’s [REDACTED]. ([REDACTED])

section.” 7 CFR § 273.7(a)(1)(vii). The terms ‘voluntary quit’ and ‘reduction of work effort’ are described at 7 CFR § 273.7(j) and the ‘good cause’ exception is discussed at 7 CFR § 273.7(i). 7 CFR § 273.7(a)(2).

Regulation 7 CFR § 273.7(j) addresses voluntary quit without good cause by an applicant or participant in the Food Stamp program. The regulation provides, in relevant part, an individual is not eligible to participate in the Food Stamp Program if, at any time after applying, an individual voluntarily and without good cause quits a job of 30 hours a week. 7 CFR § 273.7(j)(2)(i) and (ii).

Regulation 7 CFR § 273.7(j)(3)(ii), in relevant part, requires the State to determine if a job termination was a voluntary quit and if it was without good cause. “Changes in employment status that result from ... resigning from a job at the demand of the employer will not be considered a voluntary quit for purposes of this paragraph (j).” 7 CFR § 273.7(j)(3)(ii).

Once the State has determined a voluntary job quit has occurred, it must evaluate whether the job quit was for good cause. 7 CFR § 273.7(j)(3)(v).

Regulation 7 CFR § 273.7(i) addresses good cause. This regulation requires the State to determine if good cause exists for failing to comply with work requirements of the Food Stamp Program and states: “[s]ince it is not possible ... to enumerate each individual situation that should or should not be considered good cause, the State agency must take into account the facts and circumstances, including information submitted by the employer and by the household member involved, in determining whether or not good cause exists.” 7 CFR § 273.7(i)(1).

Good cause includes circumstances beyond the individual’s control and work demands or conditions that render continued employment unreasonable. 7 CFR § 273.7(i)(2) & (3)(ii).

The period of disqualification from eligibility to receive Food Stamp benefits for a person found to have failed to comply with the work requirements of the Food Stamp Program for a first time is the later of:

- (A) The date the individual complies, as determined by the State agency;
- (B) One month; or
- (C) Up to three months, at State agency option.

7 CFR § 273.7(f)(2)(i).

## ANALYSIS

### I. Issue

Was the Division correct, on July 28, 2010, to deny Claimant’s July 7, 2010 application for recertification of eligibility for Food Stamp benefits because it imposed a job quit penalty on grounds Claimant voluntarily quit his job at [REDACTED] Landscaping?

The factual issue to be decided in this case is whether the termination of Claimant's employment with [REDACTED] was voluntary or at the demand of his employer. The Division asserts Claimant quit his job because he was sent away from his workplace to "cool off" and did not return. Claimant asserts his supervisor, the senior co-owner of the business, fired him during an angry outburst and threatened to have him arrested if he returned.

## II. Burden of Proof and Standard of Proof

Claimant was a recipient of Food Stamp benefits during a certification period that would end on July 31, 2010. On July 7, 2010, Claimant applied for recertification of Food Stamp benefits. On July 28, 2010, the Department gave Claimant written notice it had denied his application for recertification because it was imposing a job quit penalty on Claimant.<sup>6</sup> Imposing a penalty on a recipient of Food Stamp benefits is a change from the status quo. Therefore, the Division has the burden of proving by a preponderance of the evidence that it is correct to impose a job quit penalty against Claimant.

## III. Facts Not In Dispute.

1. Claimant was employed by [REDACTED] under the direct supervision of [REDACTED], one of the two owners.
2. Claimant and his supervisor/co-owner, [REDACTED], had a heated argument which resulted in Claimant being told to leave his workplace and not return, and Claimant did leave the workplace.
3. Claimant telephoned his employer after being sent away by [REDACTED].
4. Claimant did not attend any of the proposed three meetings at [REDACTED].

## B. Undisputed Evidence.

During the hearing, Claimant provided substantial persuasive evidence from three credible witnesses all of which was undisputed. The Division did not offer the testimony of the employer or rebutting evidence. Instead, the Division relied on two documents which contain hearsay

---

<sup>6</sup> On July 28, 2010, the Division denied Claimant's application for recertification: this action took place before his existing period of certification for benefits expired on July 31, 2010. But for the job quit penalty, Claimant was eligible to receive continuing Food Stamp benefits. (Hearing Representative's testimony)

At the hearing, the Division's Representative argued that by denying Claimant's application, the burden would be on Claimant to establish his eligibility for benefits. However, the Division's actions (within the scope of this Fair Hearing) occurred on July 26-July 28, 2010, before Claimant's eligibility for Food Stamp benefits terminated on July 31, 2010.

The Division's desire to impose a penalty that would cause Claimant to be not eligible after his benefit period lapsed does not shift the burden of proof from the Division to Claimant. Regulation 7 CFR § 273.7, which provides for imposition of a period of disqualification from eligibility for a voluntary job quit without good cause, clearly places the burden on the state to prove the nature of the work termination. Moreover, under the facts of this case, even if the Claimant had the burden of proof, he would have met that burden.

statements. Hearsay statements are accorded less weight and are less persuasive. In contrast, Claimant's undisputed evidence, the testimony of three persons, greatly outweighs the evidence provided by the Division.

Claimant's evidence proves his employment was terminated by [REDACTED] because of her concerns that Claimant believed certain of [REDACTED]'s business practices were not following federal and/or state law and that Claimant would cause injury to the business as a result of these beliefs.

Particularly convincing was Claimant's undisputed testimonial evidence from two witnesses that [REDACTED] telephoned his household twice for the purpose of conveying threatening consequences if Claimant either returned to the premises of [REDACTED] or attempted to report the business practices to legal authorities.

#### IV. Preponderance of the Evidence.

In making its determination and during the hearing, the Division relied on the case note of a July 27, 2010 conversation between the Eligibility Technician and [REDACTED]. The facts recorded in the case note are hearsay evidence, and hence are accorded less weight than sworn testimony, as above stated. The Division also relied on an Employment Statement, again hearsay, which was completed by co-owner of [REDACTED], [REDACTED]. The Division determined Claimant quit his employment because he abandoned the job by not attending a meeting scheduled three times based on these two hearsay documents. A representative of [REDACTED] did not participate at the Fair Hearing.

Two critical facts both parties do not dispute are 1) [REDACTED] told Claimant to leave the workplace; and 2) Claimant initiated the telephone call to see if he could have his job returned. These two facts, alone, substantially prove Claimant did not voluntarily quit his job. These two facts undermine the employer's statement to the Division that Claimant "abandoned" his job. However, in light of all the evidence, this evidence fails to provide the preponderance of the evidence necessary for the Division to prove Claimant voluntarily quit his job.

Claimant's evidence that he was made to terminate his employment at the demand of his employer is clear and supported by the hearing record. In addition to the two facts discussed above, the fact Claimant believed he was fired and the fact Claimant's supervisor telephoned his residence and stated she would call the police and have Claimant arrested if he returned to the premises, persuasively prove Claimant was terminated from his employment at the demand of [REDACTED].

Finally, Claimant's belief that he had been terminated by [REDACTED] and was not wanted at [REDACTED] was the fact that [REDACTED] believed he had knowledge with which he could cause trouble for the business if Claimant disclosed this knowledge to authorities.

These facts meet the requirements of 7 CFR § 273.7(j)(3)(v) providing that a change in employment status resulting from the demand of the employer does not constitute a voluntary quit. Under these circumstances, it is clear Claimant's termination of employment cannot be categorized as a voluntary job quit as contemplated by 7 CFR § 273.7(a)(1)(vii).



Even if Claimant had not been made to terminate his employment, Claimant had good cause not to return to [REDACTED] for any meeting after he had been told by an enraged supervisor to leave the premises and never return, and after his household had received threats that he would be arrested if he did go to the premises. This good cause meets the exception provided by 7 CFR § 273.7(i). Continued employment under these circumstances would be unreasonable and his termination of employment would be excused for good cause. 7 CFR § 273.7(i)(3)(ii).

Regulation 7 CFR § 273.7(j)(3)(ii) excepts an individual from the classification of a voluntary job quit if the individual terminated at the demand of the employer, as is the case here. Claimant had good cause for not returning to work and for leaving at the demand of his supervisor/co-owner, based on the facts of this case. 7 CFR § 273.7(j)(3)(ii). Thus, the Division has not met its burden of proving Claimant voluntarily quit his job.

### **CONCLUSIONS OF LAW**

1. Claimant proved his termination of employment from [REDACTED] Landscaping Services on July 2, 2010 resulted from a disagreement concerning the legitimacy of certain business practices of his employer and that Claimant's supervisor/co-owner demanded he leave work and not return. Regulation 7 CFR § 273.7(j)(3)(ii) expressly provides termination of employment at the demand of the employer is not considered a voluntary job quit.
2. The Division did not meet its burden of proving by a preponderance of the evidence that Claimant terminated employment on July 2, 2010 from [REDACTED] without good cause.
3. The Division was not correct when it imposed a job quit penalty against Claimant and denied his July 7, 2010 application seeking recertification of Food Stamp benefits.

### **DECISION**

The Division has not met its burden of proving by a preponderance of the evidence that Claimant voluntarily quit his employment with [REDACTED] Landscaping. Therefore, the Division was not correct to impose a job quit penalty and deny Claimant's July 7, 2010 application for recertification of Food Stamp benefits.

### **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. To do this, 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

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.

