

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of )  
 )  
L C and )  
K K ) OAH No. 13-0346-ATP  
 ) DPA Case No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

The Alaska Temporary Assistance Program (ATAP) generally requires that able-bodied participants who are not caring for young children find and maintain employment.<sup>1</sup> If a participant terminates his or her employment without good cause to do so, the Division of Public Assistance (Division) is required to impose a non-compliance penalty known as a "job-quit penalty."<sup>2</sup> This penalty decreases, at least temporarily, the amount of the participant's household's ATAP benefits.<sup>3</sup>

The Division imposed a one month, first time job-quit penalty on Ms. C's ATAP case based on its determination that Mr. K voluntarily quit suitable employment without good cause.<sup>4</sup> This decision concludes, based on the evidence in the record, that the evidence as to why Mr. K lost his job was equivocal. Mr. K's testimony that his employment was terminated because he could not afford the warm work clothes necessary to work outside was as credible as the hearsay statements by his former employer that he had walked off the job. Because the law places the burden of proof in this case on the Division, it is required to prove that it is more likely than not that its factual assertions are true. Where (as here) both parties' evidence is equally credible, the party bearing the burden of proof must lose. Accordingly, based on the evidence, the Division was not correct to impose the job-quit penalty at issue, and the Division's imposition of the job-quit penalty is therefore reversed.

**II. Facts**

**A. Relevant Procedural History**

On March 18, 2013 the Division notified Ms. C that the Division was imposing a first time, one month penalty on the household's ATAP benefits, and that the household would

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<sup>1</sup> 7 AAC 45.260.  
<sup>2</sup> AS 47.27.015.  
<sup>3</sup> AS 47.27.015; 7 AAC § 45.970.  
<sup>4</sup> Ex. 6.

therefore receive no ATAP benefits for the month of April 2013.<sup>5</sup> The notice stated that the penalty was being imposed because Mr. K quit his no name job without a good reason.<sup>6</sup>

Ms. C and Mr. K requested a hearing.<sup>7</sup> The hearing was held on April 9, 2013. Mr. K participated in the hearing by phone, represented his household, and testified on its behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, participated in the hearing by telephone and represented the Division. Eligibility Technician Jamie Washburn and Employment Security Specialist Maxine Barron participated by phone and testified for the Division. The record closed at the end of the hearing.

**B. Material Facts**

L C has a household of three persons consisting of herself, K K, and their three month old daughter.<sup>8</sup> On January 9, 2013, Ms. C applied and was found eligible for ATAP benefits.<sup>9</sup> When Ms. C's daughter was born in February 2013 the Division added the child and Mr. K to Ms. C's ATAP case, but Mr. C's income from employment at a no name caused the household's income to exceed the ATAP income limit for a household of three.<sup>10</sup> Accordingly, on or about March 12, 2013, the Division notified Ms. C that the household's ATAP benefits would cease at the end of that month.<sup>11</sup>

On March 15, 2013, Mr. K contacted the Division and advised that he no longer worked at the no name and was now working at a restaurant.<sup>12</sup> Mr. K gave the Division a statement from his employer which stated that he worked 30 hours per week and was paid \$8.25 per hour.<sup>13</sup>

Division Eligibility Technician Jamie Washburn contacted Mr. K's former employer to determine the circumstances under which he left the no name job. A written statement from the former employer stated in part that Mr. K was "fired" on January 28, 2013, for having inadequate clothing or gear to perform his work.<sup>14</sup> However, a telephone call to the former

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<sup>5</sup> Ex. 6.

<sup>6</sup> Ex. 6.

<sup>7</sup> Exs. 5, 5.1.

<sup>8</sup> Ex. 1.

<sup>9</sup> Ex. 1.

<sup>10</sup> Ex. 2. At the no name job Mr. K worked 40 hours per week and was paid \$10.50 per hour (Ex. 3.1).

<sup>11</sup> Ex. 2.

<sup>12</sup> All facts found in the next three paragraphs are taken from Ex. 3 and Ms. Washburn's hearing testimony unless otherwise indicated.

<sup>13</sup> The new restaurant job paid less than Mr. K's prior no name job (Ex. 4).

<sup>14</sup> Exs. 3, 3.1. The identity of the author of this portion of the statement was disputed.

employer's payroll department indicated that Mr. K had "quit his job with no reason" on January 31, 2013.

Because of this conflicting information Ms. Washburn contacted Mr. K's former supervisor. The supervisor stated that Mr. K had a bad attitude on January 31st and that, after the supervisor spoke to him, Mr. K walked off the job after working about two hours and never returned. In addition, the employee who had signed the written statement (Ex. 3.1) told Ms. Washburn that he had filled-in the information concerning Mr. K's pay rate and last check, but that he had not written the statement that Mr. K had been terminated for having inadequate gear, and that someone else must have added that.<sup>15</sup>

The no name's supervisor later submitted a written statement which went into greater detail about the events of January 31st.<sup>16</sup> He wrote in relevant part:

K claimed that he was having troubles with our yard supervisor, and . . . was being unfairly teased by his co-workers<sup>[17]</sup> . . . . I tried to talk him through his concerns . . . . At the end of our conversation, K said that he was going to calm down in our lunch room for a few minutes and then return to work. Approximately one-half hour later, I was informed by our office staff and some . . . other employees that K walked off the job. K did not directly inform me that he quit . . . .

Mr. K's version of the events at issue differed substantially from that presented by his former employer.<sup>18</sup> He testified that he was originally hired by the no name company as a mechanic, which was an indoor job. However, after about two weeks the company transferred Mr. K to work outdoors in the no name itself. This occurred in early January 2013.

The employees who worked out in the no name were expected to be able to stay out and work without breaks for four hours at a time. Mr. K did not have work clothes (especially boots) that were warm enough to allow him to work outside for such extended periods. He found himself needing to go inside and warm up every hour or two. Mr. K contacted Ms. Barron on January 31st to see if he could get help from ATAP to buy new work clothes. However, at that time Mr. K was not yet part of Ms. C's ATAP household, and so Mr. K was not able to get monetary assistance from ATAP for the work clothes.<sup>19</sup>

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<sup>15</sup> Ex. 4.

<sup>16</sup> Exs. 15.1, 15.2.

<sup>17</sup> Mr. K testified that his co-workers were giving him a hard time because he had filed a worker's compensation claim after another worker dropped a heavy object on his hand.

<sup>18</sup> All factual finding in the following four paragraphs are based on Mr. K's hearing testimony unless otherwise noted.

<sup>19</sup> This testimony was corroborated by Maxine Barron at the hearing.

At the hearing Mr. K testified that on January 31st, after he had worked for about two hours, he went inside to see his supervisor U S. He asked Mr. S for a draw / advance on his next paycheck and for permission to take time off work and go shopping for warmer work clothes. Mr. K testified that Mr. S told him he could take time off that morning to go price some new work clothes, and that he would see about a draw / advance once the clothes had been priced.

Mr. K testified that, after he had gotten permission from Mr. S to leave, he went out, priced new work clothes, and returned to the no name company. When he got back to work he was told that he had left work without permission and that he was fired. At the time he was terminated Mr. K had worked for the no name company for a total of six weeks (two weeks indoors and four weeks outdoors).

### **III. Discussion**

#### **A. *Applicable Burden of Proof and Standard of Proof***

This case involves the Division's termination of previously existing ATAP benefits and its assessment of a job-quit penalty. The Division has the burden of proof by a preponderance of the evidence in benefit termination cases.<sup>20</sup> This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not.<sup>21</sup>

#### **B. *ATAP Employment Requirements***

The Alaska Temporary Assistance Program (ATAP) is a program created by the Alaska Statutes to implement the federal Temporary Aid to Needy Families (TANF) program.<sup>22</sup> ATAP generally requires that able-bodied participants, who are not caring for young children, find and maintain employment in order to receive benefits.<sup>23</sup> If a participant terminates his or her employment without good cause to do so, the Division is required to impose a job-quit penalty.<sup>24</sup> This penalty decreases, at least temporarily, the amount of the participant's household's ATAP benefits.<sup>25</sup>

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<sup>20</sup> 7 AAC 49.135.

<sup>21</sup> *Black's Law Dictionary* at page 1064 (West Publishing, Fifth Edition, 1979).

<sup>22</sup> See A.S.47.05.010(1); A.S.47.27.005 – A.S.47.27.990. The Alaska Temporary Assistance Program's regulations are set forth at 7 AAC 45.149 – 7 AAC 45.990.

<sup>23</sup> 7 AAC 45.260.

<sup>24</sup> AS 47.27.015.

<sup>25</sup> AS 47.27.015; 7 AAC § 45.970. Under AS 47.27.015(c), the penalty for a first-time job quit penalty is the loss of one month's eligibility and benefits.

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 Mr. K was employed; (2) that his employment was “suitable;” (3) that he was “voluntarily separated” from his job; and (4) that he did not have a good reason to do whatever actions resulted in the termination of his employment. In this case there is no dispute that Mr. K was employed and that his employment was suitable. The only issue in this case is whether Mr. K quit his job voluntarily (as the Division asserts),<sup>26</sup> or whether (as he asserts) he was terminated for reasons beyond his control.<sup>27</sup> This is a purely factual issue on which the Division bears the burden of proof.

**C. *Did Mr. K Quit his job Voluntarily?***

The evidence as to why Mr. K lost his job at the no name is basically equivocal. On one hand, the Division presented hearsay statements from three different no name employees that Mr. K walked-off the job voluntarily. On the other hand, Mr. K presented credible sworn testimony that he did not quit voluntarily, but rather was terminated because of a lack of suitable work clothes and problems in getting along with the other employees. Mr. K's testimony is judged to be credible because (1) his telephone demeanor was appropriate; (2) his testimony appeared spontaneous and not rehearsed; (3) his testimony on the relevant points was assertive, definite, and not uncertain; and (4) the substance of his testimony was not improbable or inherently implausible when viewed with the other evidence presented. In addition, Ms. Barron's testimony corroborated Mr. K's testimony on the point of him contacting DPA for financial assistance with work clothing.

In cases (like this one) in which the evidence for both sides is comparable, the burden of proof becomes determinative. In this case, the Division bears the burden of proving, by evidence more persuasive than that presented by Mr. K, that Mr. K quit his job voluntarily. The undersigned finds that the Division failed to carry that burden.

**IV. Conclusion**

The Division failed to prove, by a preponderance of the evidence, that Mr. K voluntarily terminated his employment at the no name without good cause. Accordingly, the Division

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<sup>26</sup> ATAP regulation 7 AAC § 45.990 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.

<sup>27</sup> 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 . . . (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 . . . .

erred when, on March 18, 2013, it mailed a notice to Ms. C stating that her household's ATAP case would be closed after March 31, 2013 and that a one month job-quit penalty would be imposed. The Division's imposition of the job-quit penalty (one month suspension of ATAP benefits) is therefore reversed.

Dated this 28th day of May, 2013.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

### **Adoption**

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 6<sup>th</sup> day of June, 2013.

By: *Signed* \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]