

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

In the Matter of)	
)	OAH No. 13-0903-ATP
B X)	Agency No.
_____)	

DECISION

I. Introduction

B X’s household was receiving Temporary Assistance benefits. She lost her job and, based on that job loss, the Division of Public Assistance (division) imposed a 30 day job loss penalty. Ms. X contested that decision, arguing that her job loss was not voluntary or due to any misconduct on her part.

A hearing was held on August 8, 2013. Terri Gagne represented the division and called one witness, Sandi Allen.¹ Ms. X represented herself, and testified on her own behalf. Because the division has not met its burden of proving that Ms. X’s job loss was voluntary, its decision is reversed and no job quit penalty is imposed. Independent of this factual basis for not imposing a penalty, the situation presented here does not meet the legal criteria for imposing a job quit penalty.

II. Facts

Ms. X was employed by a friend to work at a coffee shop, No Name.² Although employed, Ms. X’s household still qualified for Temporary Assistance benefits.³ On June 4, 2013, Ms. X informed the division that she had lost her job.⁴ The division received a written statement from Ms. X’s employer stating that her termination date was June 2, 2013, and that she had been terminated because of too “many late days and absences.”⁵ Based on this statement, the division determined that there was not good cause for the job loss and that a job quit penalty should be imposed.⁶

¹ Ms. Allen works for a company under contract with the state to support recipients of public assistance benefits in obtaining and maintaining employment.

² Testimony of Ms. X.

³ Statement of Ms. Gagne; Agency position statement

⁴ Exhibit 2; Exhibit 10; Testimony of Ms. Allen.

⁵ Exhibit 3. This statement was made on a reporting form provided to employers by the division.

⁶ Exhibit 4.

III. Discussion

A household receiving Temporary Assistance benefits is not eligible to continue receiving those benefits for a period of time if the “need for cash assistance is due to a refusal of or voluntary separation from suitable employment . . . without good cause[.]”⁷ For the first such refusal or separation, the penalty period is one month.⁸ Good cause includes a loss of employment for a reason outside the recipient’s control and not due to the recipient’s own action or inaction.⁹

The division argued that Ms. X’s absences and tardiness were within her control, and therefore she did not have good cause for her job loss. The evidence to support the claim that she had been absent or late to work comes from the employer’s written statement,¹⁰ and Ms. Allen’s testimony that Ms. X had missed one appointment with her without calling in advance to cancel.¹¹

Ms. X denied being late or absent too many times. She testified that the only times she missed work were when she arranged the absence in advance and obtained advanced approval. On the day she was terminated, her son was very sick. She called in to inform her employer she could not work, and she was told it was not a problem.¹² She testified that she believes the reason she was terminated is that she informed her employer that a co-worker—who is also a friend of the employer—was selling marijuana from the coffee shop. Her employer terminated Ms. X shortly after this disclosure was made.¹³ Ms. X testified that she did not tell the division this because she was very upset, and she didn’t know if she should report it or what she should do. Ms. Allen confirmed that Ms. X was upset when she reported her job loss. Ms. Allen testified that Ms. X told her she had been fired so that the employer could hire someone else.

Because the division is seeking to reduce Ms. X’s benefits, it has the burden of proving facts to justify that reduction by a preponderance of the evidence.¹⁴ Although

⁷ AS 47.27.015(c). This penalty also applies to someone who separates from or refuses employment without good cause before applying for Temporary Assistance.

⁸ AS 47.27.015(c)(1).

⁹ 7 AAC 45.261(a)(10).

¹⁰ Exhibit 3.

¹¹ See also Exhibit 14.1 (Case Management System report). It is possible, though not required, to infer from this one missed appointment that Ms. X also missed other commitments, such as scheduled work.

¹² Testimony of Ms. X.

¹³ *Id.*

¹⁴ 7 AAC 49.135.

hearsay, the employer's written statement is admissible if it is evidence a reasonable person might rely on in the conduct of serious affairs.¹⁵ Under this standard, the employer's statement is admissible evidence. It is not, however, sufficient evidence in this case to outweigh Ms. X's testimony. Ms. X testified under oath, and there was nothing about her testimony that suggested she was not telling the truth. She did not deny missing work, but instead explained that all missed work was pre-approved.¹⁶ The employer's statement was not made under oath, and there are no warnings on the form cautioning employers of the importance of providing completely accurate information.

Where there is equally compelling evidence on both sides of a factual dispute, the dispute will often be resolved by looking at which party has the burden of proof. Here, Ms. X does not have the burden; it is the division's burden to show that her job loss was due to Ms. X's voluntary actions or inactions. The division has not met that burden. Even without consideration of Ms. X's explanation of the real reason for her termination, the division has not established that it is more likely true than not true that the job loss was due to too many late days and absences.

There is an additional, independent reason for reversing the division's decision. The division may only impose a penalty if *the need for assistance* was based on Ms. X's voluntary separation from employment.¹⁷ It is undisputed that the need for assistance existed while she was working, and before she was terminated.

A similar situation was considered in *In re U S and X Y*.¹⁸ In that case, a recipient voluntarily left his job without a good reason. This recipient's household qualified for Temporary Assistance benefits before he quit his job. The imposition of a job quit penalty was reversed because, even if he had quit without good cause, his eligibility for Temporary Assistance benefits was not "due to" the job quit.¹⁹

¹⁵ 2 AAC 64.290(a)(1).

¹⁶ The employer's statement does not directly contradict Ms. X, as the employer may have approved those absences and then subsequently decided there were too many of them. Losing a job for taking approved time off or for staying home to care for a sick child would not be a voluntary job loss.

¹⁷ AS 47.27.015(c).

¹⁸ OAH No. 13-0370-ATP (Commissioner of Revenue, 2013). Available online at <http://aws.state.ak.us/officeofadminhearings/Documents/ATP/ATP130370.pdf>.

¹⁹ OAH No. 13-0370-ATP, page 3. *See also* OHA Case No. 11-FH-003. Available online at <http://aws.state.ak.us/officeofadminhearings/Documents/HSS/11-FH-003.pdf>.

In this case, Ms. X's household was eligible for Temporary Assistance benefits while working for No Name. The need for cash assistance was not due to Ms. X's separation from employment even if it were a voluntary separation. Accordingly, while there may be other consequences from a voluntary separation in this situation, the imposition of a penalty under AS 47.27.015(c) is not permitted.²⁰

IV. Conclusion

The division has not met its burden of proving that Ms. X's job loss was due to her voluntary action or inaction. In addition, even if she did lose her job because of her excess late days and absences, the loss of the job did not create her need for assistance. The division's determination is reversed and no job loss penalty is imposed.

Dated this 9th day of August, 2013.

Signed

Jeffrey A. Friedman

Administrative Law Judge

²⁰ The division argued that Ms. X had an increased need for benefits because of her job loss. That may be true, but AS 47.27.015 does not provide for a penalty where the need for benefits is increased—as opposed to created—by a voluntary action or inaction of the recipient.

PARTIAL ADOPTION

The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e), adopts the factual finding that the division has not met its burden of proving it is more likely than not true that the job loss was due to too many late days and absences, as stated on page 3 of the decision. Accordingly, no job loss penalty is imposed.

Because the factual finding fully resolves the dispute in this case, the legal analysis and interpretation of AS 47.27.015(c) is not necessary to this decision and that interpretation is not adopted.

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 23rd day of September, 2013.

By: Signed _____
Ree Sailors
Deputy Commissioner, DHSS

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