

A telephonic hearing was held on January 10, 2014. Ms. X represented herself. Terri Gagne represented the Division. The Division did not call any witnesses, but relied on the casenotes in the record. This included a note that a Division employee had spoken to an unidentified No Name manager who said that Ms. X was terminated for tardiness and poor performance.⁴ In addition, the Division presented a casenote representing that for the purposes of collecting unemployment insurance, the Department of Labor had found that Ms. X was terminated for misconduct.⁵ Ms. X provided testimony under oath that at the time of her termination, a No Name manager had informed her that the reason for her termination from No Name was that the No Name manager did not want her there. The No Name manager mentioned poor performance, but no one had ever mentioned poor performance to her at any previous time. The manager said that she could not transfer Ms. X to a different No Name position because Ms. X could not work on Sundays and holidays, and it would not be fair to more senior employees to give her Sundays and evenings off.

Although Ms. X acknowledged that she had twice been late to work without prior approval, she had only been spoken to once for tardiness, and that was a time when she had locked her keys in her car. The No Name manager did not mention tardiness to her as a reason for the termination.⁶ Finally, with regard to the Department of Labor's alleged finding that Ms. X was terminated for misconduct, Ms. X testified that this was not true. She received unemployment insurance payments with only a one-week wait, and no finding of termination for misconduct had been made.⁷

III. Discussion

The Alaska Temporary Assistance Program (ATAP) implements the federal Temporary Aid to Needy Families (TANF) program.⁸ ATAP generally requires that able-bodied participants, who are not caring for young children, find and maintain employment in order to receive benefits.⁹ If a participant terminates his or her employment without good cause to do so,

⁴ Division Exhibit 3.

⁵ Division Exhibit 6.1.

⁶ X testimony.

⁷ *Id.*

⁸ See A.S.47.05.010(1); A.S.47.27.005 – A.S.47.27.990; 7 AAC 45.149 – 7 AAC 45.990.

⁹ 7 AAC 45.260.

the Division is required to impose a job-quit penalty.¹⁰ Regarding an involuntary termination, the regulations provide that

[i]f the department 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 the department will enforce the period of ineligibility specified in AS 47.27.015 (c).¹¹

Here, the Division argues that Ms. X was terminated from employment for reasons that were within her control: tardiness and poor performance. Ms. X argues that she was terminated because her direct supervisor did not like her. She would have been willing to transfer from the No Name's position to a checking position. She had done some fill-in as a checker, and was under the impression that this transfer was possible. She states that the No Name manager who fired her, however, told her she could not work as a checker because she was not available on Sundays and holidays. In Ms. X's view, this ties back to her inability to obtain childcare at those times.

The Division is correct that under 7 AAC 45.970(e), a person who is terminated for tardiness and avoidable poor performance would be subject to the job-quit penalty. The Division has the burden of proof in this case, which means that the Division must come forward with credible evidence that proves that Ms. X was terminated for reasons within her control.¹² Here, the only evidence that the Division has is unsworn hearsay within hearsay – statements purportedly made by a store manager to an employee of the Division, which are written into a casenote and presented as evidence.¹³

In contrast, Ms. X has given sworn testimony that she was terminated for reasons that were beyond her control. In her view, the No Name manager was resentful because Ms. X had gone to the No Name manager's supervisor with job complaints.¹⁴ Although poor performance was mentioned during her exit interview, she had never been given notice of poor performance. If her performance actually was deficient, without notice, she could not have taken steps to

¹⁰ 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. The penalty for a second job-quit penalty is the loss of six month's eligibility and benefits.

¹¹ 7 AAC 45.970(e).

¹² 7 AAC 49.135.

¹³ Although the Division's representative, Ms. Gagne, stated at the hearing that she had heard the same explanation during a telephone call with the store manager, Ms. Gagne was not under oath and did not indicate that she was testifying. The store manager did not testify.

¹⁴ X testimony.

improve her performance, which makes performance an issue beyond her control. Further, the reason she was not retained in a checker position was because she could not obtain child care.¹⁵ Finally, Ms. X gave sworn testimony that the Department of Labor did not find that she was terminated for misconduct.¹⁶ In sum, the Division did not meet its burden of proving that Ms. X is subject to a job-quit penalty for voluntary termination of employment.¹⁷

IV. Conclusion

Credible evidence in the record supports Ms. X's assertion that she was terminated from her employment for reasons that were beyond her control. The Division has not met its burden of proof and its decision imposing a job-quit penalty on Ms. X's eligibility for ATAP benefits is reversed.

DATED this 16th of January, 2014.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services, I adopt this Decision as the final administrative determination in this matter, under the authority of AS 44.64.060(e)(1),.

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 18th day of February, 2014.

By: Signed
Signature
Stephen C. Slotnick
Name
Administrative Law Judge
Title

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

¹⁵ *Id.* Ms. X also testified that she has obtained other employment and is exiting ATAP. She asked for this fair hearing because she did not want this penalty on her record.

¹⁶ *Id.*

¹⁷ *See In re LC and KK*, OAH No. 13-0346-ATP (Comm'r Health and Social Serv., 2013) (holding that hearsay evidence is not sufficient for Division to meet its burden of proof that ATAP benefit recipient voluntarily quit his employment).