

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

In the Matter of:)
)
 K J) OAH No. 13-1645-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.¹ If a participant terminates his or her employment without good cause to do so, the Division of Public Assistance (DPA or Division) is required to impose a non-compliance penalty known as a "job-quit penalty."² This penalty decreases, at least temporarily, the amount of the participant's household's ATAP benefits.³

The Division imposed a one month, first time job-quit penalty on Mr. J's ATAP case based on its determination that Mr. J lost suitable employment for reasons within his control.⁴ This decision concludes, based on the evidence in the record, that it is more likely than not that Mr. J' employment was terminated for reasons within his control. Accordingly, the Division was correct to impose the job-quit penalty at issue. The Division's imposition of the one month job-quit penalty is therefore affirmed.

II. Facts

A. Material Facts

Mr. J has six children and is originally from Louisiana.⁵ He came to Alaska in April 2013.⁶ His household in Alaska consists of himself and four minor children.⁷

Mr. J began working through Opti Staffing Group (Opti) in May 2013.⁸ Opti subsequently placed Mr. J with No Name, Inc. (NNI).⁹ Mr. J began working for NNI on July

¹ 7 AAC 45.260.
² AS 47.27.015.
³ AS 47.27.015; 7 AAC § 45.970.
⁴ Ex. 4.
⁵ K J' hearing testimony.
⁶ K J' hearing testimony.
⁷ Ex. 1.
⁸ Exs. 2.0, 2.2.

22, 2013, working 35 - 40 hours per week and earning \$12.00 per hour.¹⁰ During an interview with Diane Richards on September 9, 2013, Mr. J stated that he was happy with the position.¹¹ However, Mr. J ceased working at NNI in October 2013.¹² He did not officially quit, but rather simply stopped showing up for work.¹³ When subsequently questioned as to why he quit his job at NNI, Mr. J indicated that he had several reasons.¹⁴ First, Mr. Mr. J stated that he was told by his boss that he would be laid-off from his job at the end of November due to the seasonal nature of the no name business. Second, Mr. J stated that several NNI employees, including his boss, were telling racial jokes and making racial comments to him, resulting in an uncomfortable work environment. Third, Mr. J stated that he was having family issues. Fourth, Mr. J stated that he was having difficulties with transportation and with moving / changing residences. Finally, Mr. J stated that he was having trouble attending school to get his GED, while at the same time dealing with Nine Star regarding his Family Self-Sufficiency Plan (FSSP).

B. Relevant Procedural History

Mr. J and his four year old daughter have received ATAP, Food Stamp, and Family Medicaid benefits since April 2013.¹⁵ On July 12, 2013 Mr. J entered into and signed an FSSP.¹⁶ In the FSSP, Mr. J acknowledged that he was "required to participate in work and work readiness activities developed by me and DPA or its agents," and that he was required to "contact [his] case manager if [he] want[ed] to make any changes to [the] plan."¹⁷ On September 9, 2013, Mr. J signed an addendum to the FSSP in which he agreed to "[m]aintain full time hours with No Name, working Monday through Friday, 9:00 a.m. to 5:00 p.m."¹⁸

On November 1, 2013, the Division received information indicating that Mr. J had quit his job at NNI and did not have other employment through Opti Staffing.¹⁹ On November 4, 2013 and November 15, 2013, the Division notified Mr. J that it was closing his ATAP case and imposing a first time, one month penalty on his ATAP benefits; that the penalty would go

⁹ Ex. 7.0; K J' hearing testimony.

¹⁰ Ex. 19.0.

¹¹ Ex. 19.0.

¹² Ex. 7.0.

¹³ Ex. 7.0.

¹⁴ All facts found in the remainder of this paragraph are based on Ex. 7.0, Ex. 7.1, Diane Richards' hearing testimony, and K J' hearing testimony.

¹⁵ Ex. 1.

¹⁶ Exs. 18.1 - 18.2.

¹⁷ Ex. 18.2.

¹⁸ Ex. 18.

¹⁹ Ex. 2.0.

into effect on December 1, 2013 and his household would receive no ATAP benefits for the month of December 2013; and that he would once again be eligible to receive ATAP benefits in January 2014.²⁰ The notices stated that the penalty was being imposed on the grounds that Mr. J had quit his job without a good reason. The notices further stated that if Mr. J wished to receive ATAP benefits after the expiration of the penalty period, he would need to reapply.

Mr. J requested a hearing to contest the Division's decision on November 8, 2013.²¹ Mr. J's hearing was held on December 11, 2013. Mr. J participated in the hearing by phone, represented himself, and testified on his own behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, participated in the hearing by phone and represented the Division. DPA Eligibility Technicians Blanche Driscoll and Rochelle Chaffin, and Case Manager Diane Richards of Nine Star, participated in the hearing by phone and testified on the Division's behalf. The record closed at the end of the hearing.

III. Discussion

A. Applicable Burden of Proof and Standard of Proof

This case involves the Division's termination of Mr. J's ATAP benefits and its assessment of a 30 day job-quit penalty. Under the Division's regulations, in cases involving the termination or reduction of benefits, the burden of proving the facts supporting the termination or reduction of benefits rests with the Division.²² Accordingly, under the Division's regulations, and under the circumstances of this case, the Division bears the burden of proof.

The standard of proof applicable to this case is the preponderance of the evidence standard.²³ To prove a fact by a preponderance of evidence, a party must show that it is more likely than not or more probable than not that the relevant facts are as asserted by that party.²⁴

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.²⁵ ATAP generally requires that able-bodied participants, who are not caring for young children, find

²⁰ Exs. 4, 6. The first notice (Ex. 4) contained certain inaccuracies; these were corrected by way of an amended notice (Ex. 6).

²¹ Ex. 5.

²² See Department of Health and Social Services' (DHSS) "Fair Hearings" regulation 7 AAC 49.135.

²³ 7 AAC 49.135; 2 AAC 64.290(e).

²⁴ 7 AAC 49.135; 2 AAC 64.290(e); *Black's Law Dictionary* at page 1064 (West Publishing, 5th Edition, 1979).

²⁵ 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.

and maintain employment in order to receive benefits.²⁶ If a participant terminates his or her employment without good cause to do so, the Division is required to impose a job-quit penalty.²⁷ This penalty decreases, at least temporarily, the amount of the participant's household's ATAP benefits.²⁸

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. J 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 take the actions resulting in the termination of his employment.

As to the first point, there is no dispute that Mr. J was employed at NNI through Opti Staffing. Accordingly, the first job-quit penalty requirement is satisfied here.

As to the second point, the preponderance of the evidence indicates that Mr. J' employment at NNI was suitable. On September 9, 2013, after working for NNI for about six weeks, Mr. J told Diane Richards that he was happy with his position.²⁹ Accordingly, the second of the statutory job-quit penalty criteria has been met.

As to the third point, there is no question that in this case Mr. J quit his job voluntarily. He was not fired; he simply ceased showing up for work.³⁰ Accordingly, the third element of the job-quit penalty test is satisfied here.

The main factual dispute in this case centers on the fourth element of the job-quit penalty test - whether Mr. J had good cause to leave his employment with NNI.³¹ The parties disagree as to many of the facts surrounding Mr. J' termination of his employment at NNI. However, Mr. J himself indicated that the racial jokes which he encountered at NNI were not the sole, or even the primary, reason he left his job at NNI. Mr. J' hearing testimony indicates that the main reason he left NNI in October 2013 was that his boss told him that, because of the seasonal downturn in the no

²⁶ 7 AAC 45.260.

²⁷ AS 47.27.015.

²⁸ 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.

²⁹ Ex. 19.0.

³⁰ 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.

³¹ 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

name business, he would be laid-off by the end of November 2013 in any event. Mr. J also testified that he quit his job at NNI because he was having marital troubles at the time. So, while the racial jokes and comments may have been one reason Mr. J quit his job, they were not the only reason, or even the main reason. A legitimate reason for quitting a job does not constitute "good cause" under 7 AAC § 45.261 where (as here) the employee would have quit the job anyway for other reasons which would not satisfy the "good cause" requirement.

Further, in his FSSP, Mr. J acknowledged that he was "required to participate in work and work readiness activities developed by me and DPA or its agents," and that he was required to "contact [his] case manager if [he] want[ed] to make any changes to [the] plan."³² Thus, if Mr. J felt that he had good cause to terminate his employment with NNI, his FSSP required that he discuss the issue with his Nine Star case manager prior to quitting. Mr. J did not do so in this case. Accordingly, Mr. J did not have good cause to leave his employment with NNI. The Division was therefore correct terminate Mr. J's ATAP benefits and to impose a one-month, first-time job-quit penalty.

IV. Conclusion

Based on the evidence, it is more likely than not that Mr. J did not have good cause, as defined by the applicable regulations, to terminate his employment. Accordingly, the Division was correct when, on November 4, 2013 and November 15, 2013 it notified Mr. J that his household's ATAP case would be closed after November 30, 2013 and that a one month job-quit penalty would be imposed. The Division's termination of Mr. J' ATAP benefits, and its imposition of the one month job-quit penalty, are therefore affirmed.

DATED this 25th day of March, 2014.

Signed _____
Jay Durych
Administrative Law Judge

³² Ex. 18.2.

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 3rd day of April, 2014.

By: Signed
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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