

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

In the Matter of)
)
D Q)
_____)

OAH No. 14-0499-ATP
Agency No.

DECISION

I. Introduction

D Q's household was receiving Temporary Assistance benefits. Her husband lost his job and, based on that job loss, the Division of Public Assistance (division) imposed a 30-day job loss penalty. Ms. Q contested that decision, arguing that her husband's job loss was not voluntary and was due to circumstances beyond his control.

A telephonic hearing was held. Jeff Miller represented the division. Ms. Q's husband, N Q, spoke on behalf of Ms. Q and testified. Because the division has met its burden of proving that Mr. Q's job loss was voluntary, its decision is affirmed and a job quit penalty is imposed.

II. Facts

N Q was employed full time by No Name (NN) in its warehouse, performing miscellaneous tasks including inventory control. His employment with NN was not successful. Mr. Q received a written reprimand and suspension for poor work quality, carelessness, and failure to follow instructions.¹ Mr. Q agreed with the employer's observations of his work habits. NN offered Mr. Q extra job coaching, which he turned down.² His performance did not improve and he was terminated:

due to the multiple mistakes he has and is continuing to make even after verbal and written warnings. N has turned down extra coaching and has been told numerous [sic] that he needs to use the RF guns and calculators. N is not eligible for rehire.^[3]

The division concluded that the loss of his job was within Mr. Q's control and imposed a job quit penalty.

¹ Exhibit 7.
² Exhibit 7.3.
³ Exhibit 7.7.

The division contacted Mr. Q to inquire about his termination. Mr. Q agreed with NN's statements regarding his poor job performance.⁴ He agreed that NN offered job coaching and extended his probation in an effort to help Mr. Q be successful.⁵ However, he does not believe that the termination was voluntary or due to circumstances within his control because he has Attention Deficit Hyperactivity Disorder (ADHD).⁶ There is no record of Mr. Q informing the division about his ADHD and the challenges presented because of this condition prior to March 18, 2014.

The division asked Mr. Q to have his health care provider complete a Health Status Report. The form was never returned to the division as of the time of hearing.

III. Discussion

The issue in this case is whether the division was correct when it imposed a one-month job quit penalty against the Qs.

ATAP focuses on family self-sufficiency through employment. In an effort to help families reach this goal, the division requires ATAP recipients complete several forms, including forms regarding the recipient's health and whether the recipient would require any help to succeed in the work place. Mr. Q completed these forms and wrote that he was in good health. He promoted himself as a fast learner, problem solver, and as someone who was focused and adaptable. If the division or Nine Star had been informed of Mr. Q's ADHD diagnosis, it could have taken steps to keep Mr. Q employed. Because Mr. Q's job performance was inadequate, NN offered him extra coaching, which he turned down even though he agreed with the employer that his work quality was poor, careless, and that he failed to follow instructions.

Mr. Q's focus on his ADHD is misplaced. The record does not contain evidence to corroborate Mr. Q's claimed ADHD diagnosis. Even if the record corroborated Mr. Q's statements, the ADHD diagnosis is not a shield against a job quit penalty because Mr. Q could have availed himself of supportive employment services through Nine Star Education and Employment services, as well as the division, if he had informed them of his ADHD.

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

⁴ Exhibit 7; Testimony of N Q.

⁵ *Id.*

⁶ Testimony of N Q.

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 Voluntary separation is found where the employee quits his job, engages in intentional misconduct causing the employer to terminate employment, or failure to work when scheduled.¹⁰ “Refusal of suitable employment” is not defined.

In its common and ordinary meaning, refusal means to turn down or reject.¹¹ Because good cause for losing a job discusses reasons outside of the recipient’s own action or inaction, it is reasonable to conclude that a refusal includes the failure to accept tools intended to help a person succeed in their job, such as coaching.

It is undisputed that Mr. Q’s poor performance was the reason for his termination. Mr. Q did not lose his job due to an action or inaction outside of his control. He knew he was not meeting his employer’s expectations. The employer offered a tool to help him succeed, job coach, and Mr. Q refused. His failure to accept the assistance was a decision within his control. Job coaching is intended to help an employee succeed.

Had Mr. Q accepted the offer of help in his position and then was terminated for poor performance, the outcome of this case may have been different. Mr. Q knew he was not meeting employer expectations and his failure to accept extra help is tantamount to a refusal of suitable employment.

IV. Conclusion

Mr. Q was terminated for poor job performance. AIH went the extra mile to help Mr. Q, including offering coaching. Mr. Q, knowing his job performance was not satisfactory, refused a tool intended to help him succeed. Under these facts, the division has

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 7 AAC 45.990

¹¹ AS 01.10.040(a); <http://www.merriam-webster.com/dictionary/refusal> (accessed June 17, 2014).

established that Mr. Q refused suitable employment. The division's determination is affirmed and a job loss penalty is imposed.

Dated this 18th day of June, 2014.

Signed _____
Rebecca L. Pauli
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 27th day of June, 2014.

By: *Signed* _____
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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