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

In the Matter of	)	
	)	
B B	)	OAH No. 15-0663-ATP
	)	Agency No.

DECISION AFTER REMAND

I. Introduction

The Division of Public Assistance ("DPA" or the "Division") imposed a "job quit penalty" on B B after she quit her hotel housekeeping job for a lower-paying retail position in May 2015. Ms. B appealed. After a hearing, the administrative law judge issued a proposed decision. The final decisionmaker in this case, Director Jared Kosin, rejected the interpretation of law on which the proposed decision had rested and remanded the case for findings on additional factual questions. This Decision follows, concluding, upon a full review of the evidence, that the Division did not meet its burden of proving that Ms. B's job quit was "without good cause." Accordingly, the Division's May 2015 imposition of a job quit penalty is reversed.

II. Material Facts[1]

B B lives in No Name with her two daughters, ages 4 and 14. At all times relevant to this appeal, Ms. B's family received benefits under the Alaska Temporary Assistance Program (ATAP).[2]

On April 14, 2015, Ms. B began working full-time as a hotel housekeeper at No Name Suites.[3] Ms. B found the No Name Suites position very physically demanding, and she struggled to meet its requirements.[4] Ms. B was expected to clean seventeen hotel rooms per shift, but, despite her best efforts, she was unable to work at this pace.[5] Ms. B's supervisor complained to her that she was "going too slow" and needed to clean the rooms at a faster pace.[6] However, Ms. B felt she was working as quickly as she could.[7] Ms. B's

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1 The following facts are established by a preponderance of the evidence.
2 Ex. 2-2.4.
3 Ex. 3.
4 Ex. 6 and Testimony of Ms. B.
5 Ex. 6-7 and Testimony of Ms. B.
6 See Ex. 6.

supervisor complained to her repeatedly about her pace of work and about the need, due to her slower pace, for other employees to help on rooms she was supposed to be cleaning. These struggles led Ms. B to begin searching for alternate employment.[8]

In early May 2015, Ms. B was offered a job at No Name Retail, a retail outlet. The job offered lower pay and fewer hours,[9] but Ms. B believed it was a better fit given her ongoing difficulties at No Name Suites and her prior history of retail employment.[10] Accordingly, she accepted the job at No Name Retail and then resigned from No Name Suites.[11]

Upon learning that Ms. B had left her No Name Suites job, DPA notified her on May 11, 2015 that it would impose a "job quit" penalty suspending her Temporary Assistance benefits.[12] DPA further indicated that the penalty would be characterized as a "second job quit," based on a prior job quit penalty imposed five years earlier.[13] The penalty for a "second job quit" is a six-month suspension of benefits eligibility.

Several days after the job quit penalty notice, DPA reversed its position and determined that these circumstances did not warrant a job quit penalty.[14] This decision came after Ms. B visited the DPA office in person and provided details about her reasons for quitting the No Name Suites job – specifically, her inability to keep up with the required pace of work.[15] The DPA caseworker also spoke with Ms. B's former supervisor, who reported that Ms. B, though hardworking, was unable to clean rooms fast enough to meet the expectations of the position.[16] The supervisor told the caseworker that she "actually did not think [Ms. B] was a good fit for the job," in that she "cleaned the rooms very well, but was not fast enough."[17]

The DPA case notes reflect that these events were judged to constitute good cause for Ms. B's job quit "because [Ms. B] cleaned rooms very well but [was] unable to clean 17

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7 Testimony of Ms. B.
8 Testimony of Ms. B.
9 Ex. 3, Ex. 6, Ex. 6.1.
10 Testimony of Ms. B.
11 Ex. 5.1, 11; Testimony of Ms. B.
12 Ex. 5.2 and Testimony of Brandon Poisel.
13 *Id*.
14 Ex. 7 (5/16/15: no job quit penalty to be imposed).
15 *See* Ex. 6.
16 Ex. 6, Ex. 7 and Testimony of Brandon Poisel.
17 Ex. 7.

rooms per day [–] not because she did not try."[18] On May 15, 2015, based on this finding of good cause, DPA notified Ms. B that her benefits would be reduced, but that her case would not be closed.[19]

Several days later, however, DPA reversed its position again.[20] On May 21, 2015, DPA again notified Ms. B that it was imposing a job quit penalty based on her resignation from No Name Suites.[21] Because this penalty was classified as a second job quit, Ms. B's household's eligibility for Temporary Assistance benefits was suspended for six months.[22]

Ms. B timely appealed, asserting that she should not be penalized for quitting the No Name Suites job, and also that any penalty imposed should not be classified as a "second" job quit.[23]

III. Procedural History

Ms. B filed her appeal on June 1, 2015. On June 8, 2015, the Department of Health and Social Services referred the matter to the Office of Administrative Hearings pursuant to AS 44.64.030(a)(42).

A hearing was held on June 29, 2015. Ms. B participated telephonically and testified on her own behalf. Michelle Cranford, representing the Division, also appeared telephonically, as did DPA Eligibility Technican Brandon Poisel, who testified on the Division's behalf. No other witnesses were called by either party.

A Proposed Decision issued on July 22, 2015 initially concluded that the Division had not met its burden under AS 47.27.015(c), the job quit penalty statute, of proving that Ms. B's family's "demonstrated need" for assistance was "due to" her departure from No Name Suites. Following a Proposal for Action by the Division, the Commissioner's Designee issued a Non-Adoption and Remand interpreting the "demonstrated need" prong as being satisfied when a job quit caused an increased need for benefits. The Commissioner's Designee remanded the matter for findings on "one or both" of the remaining elements of AS 47.27.015(c). This Decision follows.

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18 Ex. 7 and testimony of Brandon Poisel.

19 Testimony of Brandon Poisel.

20 *See* Ex. 8. Despite the detailed May 13 and May 16 case notes reflecting the justification for reversing the job quit penalty (*see* Ex. 5, 7), the May 20, 2015 case notes contain no explanation for the decision to then reinstate the penalty.

21 Ex. 8, 9, 11.

22 Ex. 9; AS 47.27.015(c)(2).

23 Ex. 10.

IV. Discussion

The Alaska Temporary Assistance Program (ATAP) generally requires that able-bodied participants not caring for young children find and maintain employment in order to receive benefits.[24] Alaska Statute 47.27.015(c) provides for periods of benefits ineligibility "if [a] family's demonstrated need for cash assistance is due to a refusal of or voluntary separation from suitable employment by the…custodial parent…without good cause." The Division asserts that Ms. B's actions warrant a job quit penalty under this statute.

In order to impose a job quit penalty under AS 47.27.015(c), the Division must demonstrate: (1) that Ms. B was employed; (2) that her employment was "suitable;" (3) that she was "voluntarily separated" from her job; (4) that she did not have a good reason to take the actions resulting in the termination of her employment; and (5) that her family's "demonstrated need" for assistance is "due to" this voluntary separation from employment.[25]

There is no dispute that Ms. B was employed, nor that she was "voluntarily separated" from her job. Additionally, pursuant to the August 31, 2015 Non-Adoption and Remand, the increased need for assistance resulting from Ms. B's departure from No Name Suites in favor of a lower-paying position satisfies the "demonstrated need" for assistance prong, because it increased her amount of need. Accordingly, the remaining issues on appeal are whether the No Name Suites job constituted suitable employment for Ms. B, and/or whether Ms. B's physical struggles with job performance constituted "good cause" for her to quit.

The ATAP program regulations define "suitable employment" to mean any "employment that complies with [the Alaska Wage and Hour Act] or produces self-employment income derived from products or services in demand within the marketing region."[26] Even where a position is "suitable," however, a job quit penalty is not appropriate where a participant leaves that position for "good cause."[27] The applicable regulations identify eighteen possible circumstances of possible "good cause" which might

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[24] *See* AS 47.27.035; 7 AAC 45.260.

[25] AS 47.27.015(c). Additionally, in order to impose the specific consequences of a "second job quit penalty," the Division must also prove that Ms. B had a prior job quit penalty. AS 47.27.015(c)(2).

[26] 7 AAC 45.990(a)(39). The ATAP manual incorporates the same definition, defining suitable employment as "any employment that complies with the Wage Hour Act." *See* Ex. 20.

[27] AS 47.27.015(c); Ex. 22.

preclude imposition of a job quit penalty.[28] These include, for example, a lack of available child care, a sudden family crisis, transportation difficulties, layoffs, accepting another job with equivalent pay and benefits, or accepting a job that is initially lower-paying, but "is more likely to provide greater gross wages and benefits in the future."[29]

The language of 7 AAC 45.261 does not suggest that the eighteen items is meant to be an exclusive list of all possible circumstances under which good cause may exist. Rather, the regulation offers that, "for the purposes of determining good cause," the various circumstances identified in subsection (a) "may constitute good cause."[30] Both the non-exclusive language and basic principles of "reason, practicality, and common sense" suggest that the "good cause" inquiry must be flexible enough to address circumstances beyond those specifically enumerated in subsection (a).[31]

The Division suggests that Ms. B quit the No Name Suites position "because 'she did not like the job.'"[32] But the record is clear that if Ms. B "did not like the job," this was so because she and her supervisor both believed she was physically incapable of performing it successfully. Ms. B's testimony on this point was credible. And the Division's witness and records both quote Ms. B's supervisor as believing that Ms. B "was not a good fit" for the job and was unable to meet the expectations of the position.[33] Within this context, the totality of the circumstances supports a conclusion that Ms. B's decision to leave the No Name Suites job at which she was failing in favor of a lower-paying retail position at which

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[28] 7 AAC 45.261. See also, Ex. 27-28; Ex. 23.

[29] 7 AAC 45.261(a)(1)-(18). Section 722-4 of the Temporary Assistance Manual likewise provides that a disqualification will not be imposed if the individual resigns a position for reasons beyond those listed, even where the position "may not equally provide equal wages and benefits," but "is more likely, in the case manager's judgment, to lead to self-sufficiency." See Ex. 23.

[30] 7 AAC 45.261.

[31] *See Wilson v. State, Dep't of Corr.*, 127 P.3d 826, 829 (Alaska 2006) ("We interpret a statute according to reason, practicality, and common sense, considering the meaning of its language, its legislative history, and its purpose.… We apply a similar analysis in interpreting a regulation").

[32] Position statement, p. 4 (quoting DPA caseworker notes).

[33] Of note, it is reasonable to infer from the record that, had Ms. B not quit the No Name Suites job, she was likely to have been fired – which, in turn, likely would have significantly impaired her longer-term self-sufficiency goals. While Mr. Poisel testified that Ms. B denied having been told directly that she would be fired if she did not quit, it is reasonable to infer that Ms. B's job was in jeopardy. Given the undisputed evidence – including from the employer – that Ms. B was not a good fit for the job and could not complete the required tasks, and Ms. B's testimony about ongoing complaints from her supervisor, it is more likely than not that the hotel would have sought to replace Ms. B with an employee who was a better "fit" and who successfully could do the work. Even if Ms. B's job were not in immediate peril, she held a job which she and her supervisors agreed she could not adequately perform. It was these issues, and not simple job dissatisfaction, that led Ms. B to leave No Name Suites in favor of the position at No Name Retail.

she believed she could be more successful satisfies the “good cause” requirement of AS 47.27.015(c).

IV. Conclusion

The Division did not meet its burden of proving that Ms. B’s departure from the No Name Suites job was “without good cause” under AS 47.27.015(c). Accordingly, the job quit penalty imposed on May 21, 2015 is REVERSED.

Dated: September 18, 2015

Signed
Cheryl Mandala
Administrative Law Judge

Adoption

The undersigned, by delegation from 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 5th day of October, 2015.

By: *Signed*
Name: Cheryl Mandala
Title: Administrative Law Judge/OAH

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