

consistently, and that the issue never seemed to improve. He agreed that Ms. D was fired because she entered incorrect procedure codes and chart documentation.⁷

Ms. D enjoyed her job very much.⁸ She made charting and coding mistakes, but had no other performance issues.⁹ She wasn't purposely making mistakes, and she was not sabotaging her own job.¹⁰

III. Discussion

The Alaska Temporary Assistance Program (ATAP) provides cash benefits to eligible families.¹¹ A family is not eligible for benefits if the need for assistance is due to the voluntary separation from suitable employment, without good cause, by the adult applicant.¹² If the 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 47.25.0115, and the department will enforce the period of ineligibility specified in AS 47.27.015(c).¹³

The issue in this case is not whether the dental clinic was correct to terminate Ms. D's employment. Instead, the question is whether the mistakes she made were voluntary actions within her control. More specifically, the question is whether the mistakes were made voluntarily or involuntarily.

This same question was addressed in a prior appeal. *In re K S W-X*¹⁴ was an appeal of a job quit penalty imposed by DPA. Ms. S W-X had been terminated because her employer had concerns about the accuracy of her work.¹⁵ The imposition of a job quit penalty was reversed because her termination was not a voluntary separation from employment.¹⁶

The analysis used in *In re K S W-X* applies here as well. When a termination is based on the inability to perform the job with the level of quality expected by the employer, the termination is not voluntary. There is some evidence that Ms. D improved her performance until

⁷ Position statement, page 8.

⁸ D testimony.

⁹ *Id.*

¹⁰ *Id.*

¹¹ AS 47.27.005.

¹² AS 47.27.015(c). For the second voluntary separation, there is a six month period of ineligibility. AS 47.27.015(c)(2).

¹³ 7 AAC 45.970(e).

¹⁴ OAH No. 12-0574-ATP (Commissioner of Health and Social Services 2012).

¹⁵ *In re K S W-X*, page 3.

¹⁶ *Id.*

her 90 day probation period ended, but her performance subsequently deteriorated, and she was fired.¹⁷ One permissible inference from this evidence is that Ms. D purposely started making mistakes. However, that inference is not made here for several reasons. First, no one from the dental office suggested the mistakes were intentional. Second, the owner of the dental office stated that she never seemed to improve,¹⁸ which contradicts the assertion of temporary improvement. Finally, Ms. D testified credibly that she loved her job and she did not purposely make mistakes.

There certainly could be situations where a person intentionally or recklessly performed his or her job poorly, and was fired as a result. In those situations, it might be reasonable to determine that the termination was based on an action or inaction within the employee's control. That is not the situation here. Ms. D was not trying to make mistakes. She was simply unable to consistently perform the charting and coding tasks without making more mistakes than her employer was willing to accept. Those mistakes were not actions or inactions within her control.¹⁹

IV. Conclusion

Ms. D tried her best to live up to her employer's expectations, but was unable to do so. Her termination was not based on any action or inaction within her control. Ms. D's application should have been approved, and the decision to deny her application for ATAP benefits is REVERSED.

Dated this 17th day of July, 2015.

Signed
Jeffrey A. Friedman
Administrative Law Judge

Adoption

The undersigned adopts this decision as final 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 AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 21st day of August, 2015.

By: Signed
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

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

¹⁷ Position statement, page 7.

¹⁸ Position statement, page 8.

¹⁹ Her action of entering the charting or billing data was within her control, but it was not within her control do so without making mistakes.