

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

In the Matter of	)	
	)	OAH No. 15-0997-ATP
T N	)	Agency No.
_____	)	

**DECISION**

**I. Introduction**

T N was receiving Temporary Assistance benefits through the Alaska Temporary Assistance Program (ATAP). He was terminated from his job and, after an investigation, the Division of Public Assistance (Division) closed his Temporary Assistance file and imposed a one month voluntary job quit penalty. Mr. N appealed the Division’s action.

A hearing was held on August 19, 2015. Mr. N represented himself. The Division was represented by a lay advocate, Sally Dial. Based on the evidence presented, the imposition of a job quit penalty is reversed.

**II. Facts**

Mr. N was employed as a painter from approximately June 22, 2015 through July 8, 2015.<sup>1</sup> The only issue in dispute is the reason for his termination on July 8, 2015. The parties presented two very different versions of why Mr. N was terminated.

On July 14, 2015, the employer told the Division that Mr. N was fired for “insubordination.”<sup>2</sup> On July 20, 2015, the employer told the Division that Mr. N was fired because “he could not get along with anyone and was a real jerk to all. His behavior was offensive and caused issues with fellow workers.”<sup>3</sup> On August 7, 2015, the employer stated that Mr. N would not listen to his supervisor and had a very bad attitude.<sup>4</sup> The employer also stated that Mr. N had been counseled for violating company policy by not wearing the work shirt issued by the company and for smoking at the job site.<sup>5</sup>

Mr. N’s testimony was very different. He stated he was told to take each day off from July 7 through July 9. On July 10, he was told by one of the owners that they could not afford to

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<sup>1</sup> N testimony; Exhibit 2 & 3.  
<sup>2</sup> Exhibit 3.  
<sup>3</sup> Exhibit 4.  
<sup>4</sup> Exhibit 8; Dial testimony.  
<sup>5</sup> *Id.*

keep him as an employee.<sup>6</sup> Mr. N testified that he was not rude or mean to anyone he was working with, and that he got along fine with coworkers and his supervisor. He said he was only counseled once, which was when he was told he needed to be wearing his company shirt. He immediately complied with that request.<sup>7</sup> Mr. N also testified that he had been told later by a coworker that the company suspected him of stealing tools.<sup>8</sup>

Mr. N's testimony at the hearing was consistent with what he previously reported to the Division.<sup>9</sup>

### III. Discussion

ATAP provides cash benefits to eligible families.<sup>10</sup> 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.<sup>11</sup> 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).<sup>12</sup>

The Division has the burden of proving that the termination was caused by an action or inaction within Mr. N's control.<sup>13</sup> If Mr. N did not get along with his coworkers, and was rude or insubordinate, those would likely be actions or inactions within his control.

The statements made by the employer to the Division are hearsay, but those statements are still admissible in this administrative hearing.<sup>14</sup> Although admissible, the weight given those statements is somewhat less because they were not made under oath, and there was no opportunity for Mr. N or the ALJ to question the declarant.

The Division argued that the employer's statements should be viewed as credible because the employer had no motive to fabricate its reason for terminating Mr. N. The lack of any direct

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<sup>6</sup> N testimony.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *See* Exhibits 2, 6, 7.1, 8, and 9.

<sup>10</sup> AS 47.27.005.

<sup>11</sup> AS 47.27.015(c). For the second voluntary separation, there is a six month period of ineligibility. AS 47.27.015(c)(2).

<sup>12</sup> 7 AAC 45.970(e).

<sup>13</sup> 7 AAC 49.135; *In re B X*, OAH No. 13-0903-ATP (Commissioner of Health and Social Services 2013), page 2. This and other Temporary Assistance decisions can be found at <http://doa.alaska.gov/oah/Decisions/atp.html>.

<sup>14</sup> *In re B X*, OAH No. 13-0903-ATP, page 3.

evidence regarding the employer's motive in responding to the Division's inquiries is a factor that is considered when weighing that evidence.<sup>15</sup>

Mr. N has consistently stated that he was told the reason for his termination was because the employer could not afford to employ him. He testified credibly that he got along well with his coworkers and supervisor, and that the only reprimand he received was for not wearing his company-issued shirt. There was no sworn testimony from the employer as to the reason for his termination. In addition, the employer's statements as to the reason for termination are arguably inconsistent. Insubordination is usually not considered the same as not getting along with others and being a jerk.<sup>16</sup>

There is evidence to suggest that Mr. N may have been fired for reasons within his control. This evidence is not strong enough, however, to overcome Mr. N's testimony as well as the apparent inconsistencies in the employer's stated reasons. When evidence on both sides of a factual dispute are equal, the burden of proof becomes determinative.<sup>17</sup> The Division has not met its burden of proving that Mr. N was terminated for reasons within his control.

#### **IV. Conclusion**

The Division did not meet its burden of proving that Mr. N's termination was based on a voluntary action or inaction within his control. Accordingly, the imposition of a job quit penalty is reversed.

Dated this 31<sup>st</sup> day of August, 2015.

*Signed* \_\_\_\_\_  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>15</sup> The fact that Mr. N has a financial incentive in this matter is also considered. On the other hand, Mr. N's testimony was under oath.

<sup>16</sup> Cf. Exhibits 3 and 4.

<sup>17</sup> *In re L C and K K*, OAH No. 13-0346-ATP (Commissioner of Health and Social Services 2013), page 5.

## 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 15<sup>th</sup> day of September, 2015.

By: Signed  
Signature  
Cheryl Mandala  
Name  
Administrative Law Judge  
Title

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