

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

In the Matter of:)
)
 E E) OAH No. 13-1278-CMB
) 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 Ms. E's ATAP case based on its determination that Ms. E lost suitable employment for reasons within her control.⁴ This decision concludes, based on the evidence in the record, that it is more likely than not that Ms. E's employment was terminated for reasons within her control. Accordingly, based on the evidence, 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. Relevant Procedural History

Ms. E has received ATAP and Food Stamp benefits since September 2012.⁵ On August 23, 2013 Ms. E submitted a renewal / recertification application for ATAP, Food Stamp, and Family Medicaid benefits.⁶ On August 29, 2013 Ms. E participated in an interview with a DPA eligibility technician.⁷ Ms. E told the eligibility technician that she was employed with No Name Stores, Inc. (No Name). The eligibility technician placed a phone call to No Name

¹ 7 AAC 45.260.

² AS 47.27.015.

³ AS 47.27.015; 7 AAC § 45.970.

⁴ Ex. 5.1.

⁵ Ex. 1.

⁶ Exs. 2.0 - 2.5.

⁷ This and all subsequent factual findings in this paragraph are based on Ex. 3 unless otherwise stated.

to confirm this and was advised that Ms. E had failed to show up for her last three scheduled work shifts and might be terminated. The eligibility technician then contacted Ms. E and asked if this was true. Ms. E told the eligibility technician that her son had suffered a head injury, that she had taken him to a hospital emergency room, and that he had been kept home from school for three days.

On September 5, 2013 the Division notified Ms. E that it was denying her ATAP renewal application and imposing a first time, one month penalty on her ATAP benefits; that the penalty would go into effect on October 1, 2013; and that her household would receive no ATAP benefits for the month of October 2013.⁸ The notice stated that the penalty was being imposed because Ms. E had quit her job with No Name without a good reason. The notice further stated that, if Ms. E wished to receive ATAP benefits after the expiration of the penalty period, she would need to reapply. On September 17, 2013 Ms. E requested a hearing to contest the Division's decision.⁹

Ms. E's hearing was held on October 10, 2013. Ms. E participated in the hearing by phone, represented herself, and testified on her own behalf. Terri Gagne, a Public Assistance Analyst employed by the Division, participated in the hearing by telephone and represented the Division. During the hearing Ms. E confirmed that although she had originally requested a hearing as to both her ATAP and Food Stamp benefits, she no longer needed a hearing concerning her Food Stamp benefits, and that only her ATAP benefits were still at issue. The record closed at the end of the hearing.

B. Material Facts

Ms. E has a two person household consisting of herself and her eleven year old son.¹⁰ She began working part-time for No Name on July 18, 2013.¹¹ She worked as a replenishment associate and earned \$9.00 per hour.¹²

Ms. E had a number of what No Name referred to as "attendance infractions" within the period from July 24 - September 5, 2013.¹³ On July 24 Ms. E called in sick; on July 29 Ms. E got to work 47 minutes late and left 30 minutes early; on August 6 Ms. E got to work 25

⁸ This and all subsequent factual findings in this paragraph are based on Ex. 5 unless otherwise stated.

⁹ Exs. 6.0, 6.1.

¹⁰ Exs. 1, 2.0.

¹¹ Ex. 22.6.

¹² Ex. 22.6.

¹³ Exs. 22.0 - 22.6.

minutes late; on August 9 Ms. E left work 15 minutes early, and on August 16 Ms. E did not show up for work and did not call in.¹⁴ Ms. E was counseled regarding her attendance issues on August 10 and August 21, 2013.¹⁵

On August 27, 2013, at about 4:15 a.m., Ms. E's son fell out of bed and injured his forehead.¹⁶ Ms. E took her son to the doctor and was told that he had a concussion and should not attend school for two days.¹⁷ Ms. E was scheduled to work at No Name from 5:00 a.m. to 10:30 a.m. on August 27, August 28, and August 29, 2013.¹⁸ However, Ms. E did not show up to work any of these three shifts, and she did not contact her employer on any of these dates to advise that she would not be able to work.¹⁹ No Name' policy is to interpret three unexplained missed shifts as abandonment of the job by the employee.²⁰ No Name terminated Ms. E's employment on September 5, 2013.²¹

Ms. E's version of the events at issue differed from that presented by her former employer.²² She testified that she had originally called the company on the first day of her absence to explain that she had a family emergency due to her son's head injury.²³ She was not sure if she had called-in on the second and third days of the absence, but felt that the employer was on notice of her situation after her first phone call.²⁴

III. Discussion

A. Applicable Burden of Proof and Standard of Proof

Under the Division's regulations, in cases involving requests for new or additional benefits, the burden of proof is on the applicant or recipient requesting those benefits.²⁵ This case involves the Division's denial of an ATAP renewal application and its assessment of a 30 day job-quit

¹⁴ Exs. 22.1 - 22.2.

¹⁵ Exs. 22.0, 22.1, 22.2.

¹⁶ Ex. 6.4.

¹⁷ Ex. 6.4.

¹⁸ Exs. 22.0, 22.3, 22.4.

¹⁹ Exs. 22.0, 22.6.

²⁰ Ex. 6.2.

²¹ Ex. 22.6.

²² Exs. 6.2 - 6.3, E E hearing testimony.

²³ Exs. 6.2 - 6.3, E E hearing testimony.

²⁴ Exs. 6.2 - 6.3, E E hearing testimony. No Name had no record of contact with Ms. E since August 22, 2013 (Ex. 6.2).

²⁵ See Department of Health and Social Services' (DHSS) "Fair Hearings" regulation 7 AAC 49.135.

penalty. Accordingly, under the Division's regulations, and under the circumstances of this case,²⁶ Ms. E bears the burden of proof because she was requesting new (renewed) ATAP benefits.²⁷

The standard of proof applicable to this case is the preponderance of the evidence standard.²⁸ To prove a fact by a preponderance of evidence, the party with the burden of proof must show that the fact more likely than not is true.²⁹

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.³⁰ ATAP generally requires that able-bodied participants, who are not caring for young children, find and maintain employment in order to receive benefits.³¹ If a participant terminates his or her employment without good cause to do so, the Division is required to impose a job-quit penalty.³² This penalty decreases, at least temporarily, the amount of the participant's household's ATAP benefits.³³

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 Ms. E was employed; (2) that her employment was "suitable;" (3) that she was "voluntarily separated" from her job; and (4) that she did not have a good reason to do whatever actions resulted in the termination of her employment. In this case there is no dispute that Ms. E was employed and that her employment was suitable. The only issue in this case is whether Ms. E quit her job voluntarily (as the Division asserts),³⁴ or whether (as Ms. E asserts) she

²⁶ Under 7 AAC 49.135, the Division bears the burden of proof in cases involving the termination and/or reduction of benefits. Accordingly, had the Division attempted to impose a job-quit penalty during an existing benefit period, (thereby in effect terminating benefits), the Division would bear the burden of proof.

²⁷ The same result entails under the Office of Administrative Hearings' own burden of proof regulation, 2 AAC 64.290(e), which provides in relevant part that, "[u]nless otherwise provided by applicable statute or regulation, the burden of proof and of going forward with evidence is on the party who requested the hearing" (in this case, Ms. E).

²⁸ 7 AAC 49.135; 2 AAC 64.290(e).

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

³⁰ 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.

³¹ 7 AAC 45.260.

³² AS 47.27.015.

³³ 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.

³⁴ 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.

was terminated for reasons beyond her control.³⁵ This is a purely factual issue on which Ms. E bears the burden of proof.

C. Did Ms. E Quit her job Voluntarily, or did she have Good Cause?

Although the parties disagree as to many of the facts surrounding the termination of Ms. E's employment with No Name, the facts most relevant to determining whether a job-quit penalty is appropriate here are not in dispute. First, Ms. E does not dispute that she failed to show up for work as scheduled for three days in a row (on August 27, August 28, and August 29, 2013). Accordingly, the termination of Ms. E's employment with No Name is considered voluntary under AS 47.27.015 and 7 AAC 45.990(b)(3).

The remaining issue is whether, even if Ms. E's failure to appear for work was voluntary, she had good cause for doing so. Under 7 AAC 45.261(a)(4) and (a)(10), "good cause" for refusal of, or voluntary separation from, suitable employment includes "a sudden and temporary situation beyond the control of the family, affecting health of a member or ability to comply, including family illness or death or tragedies of nature," and situations where "the recipient is separated . . . for a reason outside the recipient's control and not due to the recipient's action or inaction."

In this case, Ms. E's son's head injury clearly constituted "a sudden and temporary situation beyond the control of the family" affecting the health of a family member. Accordingly, the injury constituted good cause for Ms. E to refrain from *going* to work.

However, Ms. E's employment was not terminated merely due to her failure to *show up* for work. Rather, Ms. E's employment was terminated in significant part due to her *failure to notify her employer* that she would be unable to come to work, and of the reasons for this (*i.e.* Ms. E was terminated due to "no call, no show").³⁶

Ms. E's statements as to whether and when she called in to No Name, and who she spoke with, were vague and conflicting.³⁷ On the other hand, the employer's store manager and assistant store manager both stated unequivocally that No Name had no record of any contact with Ms. E on August 27, August 28, or August 29, 2013. Accordingly, the preponderance of the evidence

³⁵ 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

³⁶ Ex. 22.6.

³⁷ Exs. 6.2, 6.3, 6.4, E E hearing testimony.

indicates that Ms. E did not contact No Name and did not communicate that she would not be coming to work on the dates in question.

As discussed above, Ms. E's son's injuries constituted good cause for Ms. E to stay home from work. However, there is no evidence in the record that these injuries prevented Ms. E from picking up the telephone and informing her employer about her situation. Accordingly, Ms. E *did not* have good cause for her *failure to communicate with her employer* about her absence. Because No Name terminated Ms. E as much for her failure to call as for her failure to show up for work, and because Ms. E failed to call her employer when she had the ability to do so, the termination of her employment was in large part within her control and due to her inaction. Accordingly, Ms. E's separation from employment was voluntary as defined by AS 47.27.015. The Division was therefore correct to deny Ms. E's ATAP renewal application and to impose a one-month, first-time job-quit penalty.

IV. Conclusion

Based on the evidence in the record, that it is more likely than not that Ms. E's employment was terminated for reasons within her control. Accordingly, the Division was correct when, on September 5, 2013, it notified Ms. E that her household's ATAP case would be closed after September 30, 2013 and that a one month job-quit penalty would be imposed. The Division's denial of Ms. E's ATAP renewal application, and its imposition of the one month job-quit penalty, is therefore affirmed.

Dated this 29th day of October, 2013.

Signed _____
Jay Durych
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 13th day of November, 2013.

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.]