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

In the Matter of	)	
	)	
M C	)	OAH No. 14-0467-ATP
	)	Division No.

DECISION

I. Introduction

On March 17, 2014, the Division of Public Assistance denied on M C's application for Alaska Temporary Assistance Program (ATAP) benefits and imposed a one year job quit penalty.[1] Ms. C requested a hearing.[2]

A hearing was held on April 28, 2014. Ms. C and her father, K C, participated and testified. Jeff Miller, Public Assistance Analyst with the Division, represented the Division and called Bradley Lightner and Holly Hecht, both Division employees, as witnesses.

Because the evidence supports the Division's determination that Ms. C's termination was caused by actions within her control, the imposition of the job quit penalty is affirmed.

II. Facts

M C was employed at a lodge.[3] She was fired from her job on February 24, 2014.[4] Ms. C applied for ATAP benefits February 27, 2014.[5] The Division interviewed Ms. C on March 17, 2014.[6] During the interview, Ms. C informed Ms. Hecht she was fired because her boss was tired of telling her what to do.[7] Earlier, on February 24, 2014, Ms. C reported to Mr. Lightner that she was fired from the lodge because her boss was tired of telling her what to do.[8] The Division imposed a job quit penalty and denied Ms. C's application for ATAP benefits because it determined there was not good cause for separation and considered the firing a "voluntary separation."[9] Ms. C has two prior job quit penalties, both from 2007.[10]

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1 Exhibit 5.
2 Exhibit 7.
3 Exhibit 4.2; Exhibit 20; C testimony.
4 C testimony; Miller testimony reciting Ms. T's description of events.
5 Exhibit 3-3.12.
6 Exhibit 4; Hecht testimony.
7 Exhibit 4.1; Hecht testimony. The interview was memorialized in a contemporaneous file entry by Ms. Hecht. It is standard practice for Division employees to create file notes when speaking with applicants.
8 Exhibit 2; Lightner testimony.
9 Exhibit 4.1; Exhibit 6; Exhibit 16.
10 Exhibit 5 – 5.3.

On March 18, 2014, the Division sent notice of the denial.[11] Ms. C requested a hearing to challenge the denial.[12]

Ms. C submitted a letter and stated at hearing that the lodge violated its policy when it fired her.[13] She testified that the lodge's policy required three write-ups before someone could be discharged. Ms. C also stated that she believes she was fired because she was not as pretty as the other girls.

M T, a lodge manager, submitted documentation that Ms. C was terminated after three write-ups.[14] On October 11, 2013, Ms. C rented a room to two girls under 21, which the business does not allow.[15] The same day, Ms. C also took cash payment without asking permission.[16] Ms. T wrote that Ms. C was written up, that it was considered two write-ups, and notified that her next write-up would be her last.[17]

Ms. C and Mr. C both stated that the write-up for renting to people under 21 years old and taking cash was considered one write-up, not two. Ms. C stated that O Q, the lodge's owner, forced Ms. T to write Ms. C up, and that Ms. T would not have otherwise. Ms. C admitted to renting to clients under 21 and taking cash without approval.

Ms. T also wrote that on February 23, 2014, "M hid a friend in a room & wore pjs to work. Rented dirty rooms was facebooking constantly. She changed clothes after owner left & stated to several employees she needed to seem busy." Ms. T explained that because it was Ms. C's third strike, Ms. Q called and fired her on February 24, 2014.[18] Although the lodge considered it a write-up, Ms. C was not actually written up for the February 23, 2014, incident.[19] She was fired over the phone by Ms. Q on February 24, 2014.

Ms. C argued that she was not wearing pajamas, but stretch pants. She stated that she was facebooking, but primarily for advertising No Name's and other businesses owned by the lodge's owners. She admitted letting a friend stay late in a room that she had rented, but stated that the

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11 Exhibit 6.

12 Exhibits 7; 7.2.

13 Exhibit 9; M and K C testimony.

14 Exhibit 20 – 20.3. Ms. T certified, under penalty of perjury, that the information was accurate. However, it is not clear what Ms. T or the lodge considers a reprimand versus a "write-up."

15 Exhibit 20. Mr. Miller testified that he spoke with Ms. T and she clarified that the date on Exhibit 20, 10/11, is October 11, 2013. Ms. T explained that the date on Exhibit 20.1, 10/13, was also October 11, 2013.

16 Exhibit 20.1.

17 Exhibit 20.1.

18 Miller testimony. Mr. Miller explained that Ms. T was told of Ms. C's firing when she returned from vacation. Ms. T was not present when Ms. C was fired over the phone by Ms. Q.

19 Miller testimony.

maid said it was "ok." When asked, she stated Ms. Q told her the friend could have a late check out if she stayed in the room.

Included in the documentation was a copy of an October 13, 2013 write-up.[20] Under incident details, the write-up states: "On 10/11 M rented a room to two girls who were under 21 she also took cash payment which is not accepted and failed to call and ask to do so."[21] Under action taken, the write-up states: "Hours reduced verbal warning 2 write ups warned that the next one was last." Ms. C and Ms. T signed the document.[22] Ms. C testified that when she signed the document, it only said "hours reduced, verbal warning," under "action taken." Ms. C testified that Ms. T must have added the language, "2 write ups warned that next one was last," after she signed the document.

Ms. C's employment statement reads that she was "laid off" and states that O "layed me off during my day off." At hearing, Mr. C clarified that he filled out the employment statement, not Ms. C. He also stated that he marked and wrote laid off, when Ms. C was actually fired, "because when you get fired from someplace without a reason, why not put laid off. Employers do that for a lot of reasons why. They don't have to tell you why you're fired, but when they lay you off, if you go to unemployment, then you have a six week waiting period... So I always put laid off. It's up to them to prove that I wasn't laid off." Ms. C submitted the employment statement knowing it mischaracterized her termination.

At hearing and in a written letter, both Ms. C and her Mr. C stated O Q, the lodge owner, lied about M's firing and did not follow the lodge's own policies.[23] They also stated that Ms. T's submission to record was inaccurate. Though given the opportunity, neither the Division nor Ms. C chose not to call Ms. T or Ms. Q as a witness. Ms. C also testified that she did not tell either Mr. Lightner or Ms. Hecht that she was fired because her boss was tired of telling her what

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[20] Exhibit 20.2.

[21] Exhibit 20.2.

[22] Exhibit 20.2.

[23] Exhibit 9. Exhibit 9 outlines that April, a lodge employee, contacted Ms. C and asked if she would like to work there April 4 – 5, 2014. Ms. C and Mr. C assert that she must have received permission from Ms. Q to make this call. Ms. C declined the offer because she was already working at a new job. The letter also states that Ms. C never refused work, quit, or reduced her hours. It states she was never late, but if she was going to be late she always called. The letter was carefully considered, but did not change the outcome of this decision.

to do. Ms. C claimed that she told the Division what Ms. Q told her earlier, which was that she better step up her game because Ms. T wanted to fire her.[24]

Ms. C testified that when she was hired, employees were allowed to rent to anyone over 18, and cash was an accepted form of payment. Ms. C stated that she was not told of the changes to these policies until after she violated them. She testified that the written policies were changed after she was reprimanded. Ms. C also testified that the lodge's policy required three write-ups prior to termination and the policy did not include information about verbal warnings.

Ms. C's testimony was inconsistent as to why she was fired. Per testimony and Division case notes, Ms. C stated that she was fired because her boss was sick of telling her what to do on two separate occasions, to two different Division employees. Her explanation that she was telling the Division what Ms. Q told her on a different occasion was not credible. At hearing, Ms. C stated that she told the Division that Ms. Q did not give her a reason for being fired. It is unlikely that two disinterested Division employees would enter the exact language and confuse Ms. C's statements twice. Also, Ms. Hecht and Mr. Lightner testified credibly that they accurately entered the information into the case notes. Ms. Hecht testified that she took the language, "I was fired because my boss was sick of telling me what to do," from an employment form and confirmed it during the March 17, 2014, telephone interview with Ms. C.

III. Discussion

A. Applicable Burden of Proof and Standard of Proof

This case involves the Division's denial of Ms. C's ATAP application and its assessment of a one year job quit penalty. In cases involving an application for new benefits, the burden of proof rests with the applicant.[25] Accordingly, under the circumstances of this case, Ms. C bears the burden of proof.

The standard of proof applicable to this case is the preponderance of the evidence standard.[26] To prove a fact by a preponderance of evidence, a party must show that it is more likely than not or more probable than not that the relevant facts are as asserted by that party.[27]

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[24] Much of the hearing was spent on the relationships among Ms. C, Ms. Q, and Ms. T. Ms. C explained that Ms. T really wanted to keep her around and the Ms. Q was the one who wanted to fire her. Ms. Q was painted as untruthful by both M and K C. This decision does not attempt to determine Ms. Q's truthfulness.

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

[26] 7 AAC 49.135; 2 AAC 64.290(e).

[27] 7 AAC 49.135; 2 AAC 64.290(e).

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.[28] ATAP generally requires that able-bodied participants, who are not caring for young children, find and maintain employment in order to receive benefits.[29] If a participant terminates his or her employment without good cause to do so, the Division is required to impose a job quit penalty.[30] Regarding an involuntary termination, the regulations provide that

> [i]f the department determines that an individual's 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 47.25.015, and the department will enforce the period of ineligibility specified in AS 47.27.015 (c).[31]

The period of ineligibility for a third job quit penalty is 12 months.[32]

C. Ms. C's termination

There is no dispute that Ms. C was fired from her job. The question is whether the termination was caused by action or inaction within her control. The Division asserts that Ms. C was let go due to actions within her control, namely violating the lodge's policies multiple times. This is supported by statements from Ms. T, both on the phone to Mr. Miller, and by written submission. It is further supported by Ms. C's report to the Division, that she was fired because her boss was sick of telling her what to do.

Ms. C testified that she did not receive three write-ups, which is accurate. Ms. T explained that Ms. C was fired over the phone and a third write-up was never completed. Ms. C's understanding is that she only had a single write-up, for both the October 11, 2013 incidents, and a verbal warning. The copy of the employee write-up in the record may have been altered to include the "2 write ups warned the the next one was the last."

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[28] *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.

[29] 7 AAC 45.260.

[30] AS 47.27.015.

[31] 7 AAC 45.970(e).

[32] AS 47.27.015(c)(3).

Because the salient issue is the discharge for cause, it is not necessary to resolve the issue of whether the document was subsequently altered or if there was a change in business policy after the reprimand. The single issue for this case is whether Ms. C's termination was caused by actions or inactions within her control. The evidence shows that it was. Ms. C was fired from the lodge. Per Ms. T's statement and Ms. C's[33] admission, she was fired for incidents that occurred on February 23, 2014, which included hiding a friend in a room, facebooking constantly, wearing pajamas to work, and renting dirty rooms. These allegations are all within Ms. C's control.

While Ms. C claimed that none of these accusations actually occurred as described, her testimony was not persuasive. The reason given for her termination changed. On two occasions the reason was that her boss was sick of telling her what to do. At the beginning of hearing, it was because she was not as pretty as the other girls. Later during the hearing, Ms. C stated she told the Division that Ms. Q did not give her any reason for being fired. Neither her not her father indicated any concern with purposefully including inaccurate information in Ms. C's employment statement. Every instance of Ms. C's alleged failure to follow policy was explained away.

It is more likely than not that Ms. C was terminated for actions within her control. Overall, the evidence weighs in favor of upholding the Division's denial of ATAP benefits and imposition of the one year job quit penalty.

IV. Conclusion

The Division's decision to impose a one year job quit penalty on Ms. C and deny her ATAP application is affirmed.

DATED this 9th day of June, 2014.

Signed
Bride Seifert
Administrative Law Judge

[33] Ms. C did not admit to violating any policy and explained that though a friend was in a room, it was approved. She was wearing leggings, not pajamas. She was facebooking, but primarily for the benefit of the business, which would have been allowed. If she did rent a dirty room, it would have been because one of the housekeeping staff had checked off that a room had been cleaned.

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 1st day of July, 2014.

By: *Signed*
Name: Bride Seifert
Title/Division: ALJ/OAH

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