



## APPEAL TRIBUNAL DECISION

**Docket number:** 26 0022    **Hearing date:** January 29, 2026

**CLAIMANT:**

JUSTIN SCHAAF  
[REDACTED]  
[REDACTED]

**EMPLOYER:**

SILVERTHORN INVESTMENT GROUP LLC  
[REDACTED]  
[REDACTED]

**CLAIMANT APPEARANCES:**

Justin Schaaf

**EMPLOYER APPEARANCES:**

None

### CASE HISTORY

The claimant timely appealed a determination issued on December 24, 2025, that denied benefits under Alaska Statute 23.20.379. The issue before the Appeal Tribunal is whether the claimant was discharged for misconduct connected with the work.

### FINDINGS OF FACT

The claimant began working for the employer on May 1, 2025. The claimant last worked on December 7, 2025. At that time, he worked part-time as a bud tender.

On the claimant's last day of work, the owner came out to the sales floor and yelled at the claimant for interrupting another worker's customer transaction. The claimant told the employer that the customer had approached him at his register while carrying her purchase in a bag, so he believed the customer's transaction must have been complete. It was the employer's policy not to give product to a customer until the transaction was complete. The claimant asked the owner not to yell at him. The owner asked the claimant if he wanted to go home and the claimant said no. After the owner returned to the back room, the claimant told the manager that if he was going to be fired, he did not want the employer to wait until the end of the day or the end of the pay period and he would prefer they just get it over with. The owner returned to the sales floor and asked the claimant to repeat his statement. The claimant repeated his statement, and the owner told him he was fired.

The employer did not participate in the appeal hearing. Documents in the record show the employer advised the Division that the claimant was discharged because he had interrupted a co-worker's transaction, yelled and cursed at the owner, and

then aggressively yelled and cursed at the manager. The claimant denied cursing at the owner, although he recalled that his voice was loud when he asked the owner to stop yelling at him. The claimant denied that he was aggressive or yelled and cursed at the manager.

The employer told the Division that the claimant had been verbally warned numerous times about interrupting other workers in their tasks. The claimant recalled that the owner may have talked to him about such behavior once at the beginning of the claimant's tenure and the behavior did not happen again. The claimant held that he was not advised at any point that his job was in jeopardy due to his behavior, and he received no written counseling or warnings regarding his performance.

### **PROVISIONS OF LAW**

#### **AS 23.20.379 provides in part:**

- (a) An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next five weeks of unemployment following that week if the insured worker...
  - (2) was discharged for misconduct connected with the insured worker's last work.

#### **8 AAC 85.095 provides in part:**

- (d) "Misconduct connected with the insured worker's work" as used in AS 23.20.379(a)(2) means
  - (1) a claimant's conduct on the job, if the conduct shows a willful and wanton disregard of the employer's interest, as a claimant might show, for example, through gross or repeated negligence, willful violation of reasonable work rules, or deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee; willful and wanton disregard of the employer's interest does not arise solely from inefficiency, unsatisfactory performance as the result of inability or incapacity, inadvertence, ordinary negligence in isolated instances, or good faith errors in judgment or discretion....

### **CONCLUSION**

The claimant was discharged after an interaction with the owner in which the owner held that the claimant yelled and cursed at him and at a manager. The claimant recalled loudly asking the employer to stop yelling at him but denied cursing and denied being aggressive with the manager.

*Misconduct cannot be established on the basis of unproven allegations. Cole, Com. Dec. 85HUI006, January 22, 1985.*

*When a worker has been discharged, the burden of persuasion rests upon the employer to establish that the worker was discharged for misconduct in connection with the work. In order to bear out that burden, it is necessary that the employer bring forth evidence of a sufficient quantity and quality to establish that misconduct was involved. Rednal, Com. Dec. 86H-UI-213, August 25, 1986.*

The decision in this matter turns on the weight of the evidence. In Weaver, Com. Dec. 96 2687, February 13, 1997. The commissioner has held in part:

*Uncorroborated hearsay evidence must normally be given less weight than that of the sworn testimony of eyewitnesses to an event. Only if first-hand testimony is clearly not credible, should hearsay statements be considered more reliable.*

In Douglas, Com. Dec. 85H-UI-069, April 26, 1985, paraphrasing AS 44.62.460(d), the commissioner held in part:

*“Hearsay evidence may be used to supplement or explain direct evidence but is, by itself, insufficient to support a finding unless that evidence would be admissible over objection in a civil action”.*

The employer did not participate in the hearing, standing on the hearsay documents in the record. The claimant provided credible sworn testimony that he only responded loudly to the owner because the owner was yelling at him, and he denied that he cursed or was aggressive to the manager. The employer’s hearsay evidence does not establish that the claimant’s actions rose to the level of misconduct as described in Regulation 8 AAC 85.095(d), above.

*The meaning of the term misconduct is limited to conduct evincing such willful disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed "misconduct" within the meaning of the statute. Boynton Cab Co. v. Neubeck, 237 Wis. 249, 296 N.W. 636 (1041) from Lynch, Com. Rev. No. 82H-UI-051, March 31, 1982.*

The Tribunal does not question an employer's right to discharge a claimant that does not meet its standards, but such a discharge is not always for misconduct. The Tribunal finds the claimant, in this case, was discharged for reasons other than misconduct and thus the penalties of AS 23.20.379 are not appropriate.

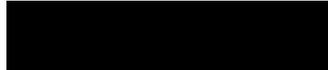
### **DECISION**

The determination issued on December 24, 2025, is **REVERSED**. Benefits are **ALLOWED** for the weeks ending December 13, 2025, through January 17, 2026, if otherwise eligible. The three weeks are restored to the claimant's maximum benefits. The determination will not interfere with the claimant's eligibility for extended benefits under AS 23.20.406-409.

### **APPEAL RIGHTS**

This decision is final unless an appeal is filed in writing to the Commissioner of Labor and Workforce Development **within 30 days** after the decision is mailed to each party. The appeal period may be extended only if the appeal is delayed for circumstances beyond the party's control. A statement of rights and procedures is enclosed.

Dated and mailed on January 30, 2026.

  
Rhonda Buness, Appeals Officer