



APPEAL TRIBUNAL DECISION

Docket number: 26 0123 **Hearing date:** March 17, 2026

CLAIMANT:

DESIREE GARRETT
[REDACTED]

EMPLOYER:

SKY WEST ASSISTED LIVING CENTERS
[REDACTED]

CLAIMANT APPEARANCES:

Desiree Garrett

EMPLOYER APPEARANCES:

Tiffany Thomas

CASE HISTORY

The claimant timely appealed a determination issued on February 17, 2026, 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 or if she voluntarily quit suitable work.

FINDINGS OF FACT

The claimant began work for the employer on September 28, 2025. The claimant last worked on October 22, 2025. At that time, she worked full-time as a caregiver.

From the beginning of her employment, the claimant had transportation difficulties, and she was frequently late for work by about 30 minutes. This required other workers to stay late and cover the claimant's duties until she showed up. The employer believed the claimant had been verbally warned by the office manager for being late, but the claimant denied that she had been warned. The claimant believed the office manager was aware of her difficulties and was supportive.

On October 24, 2025, the claimant was scheduled to start at 7:00 am. The claimant had asked a coworker to pick her up the previous day. The coworker forgot to pick the claimant up. The claimant believed there was a miscommunication with the co-worker. The claimant's phone service had been shut off the previous week. No one else was home, so the claimant had no way to contact the employer. She walked four miles to a store where she was allowed to use a phone. The claimant called the office manager, who told the claimant to go to the employer's main office and speak to the director. The

claimant had no transportation to get to the employer's main office that day, so she did not contact the employer further.

The employer considered that the claimant was in her 90-day probationary period, was frequently late and that she failed to show up without calling in advance on October 23, 2026. On October 24, 2026, the employer decided to terminate the employment relationship. The claimant's coworker later told the claimant that she had been discharged.

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...
 - (1) left the insured worker's last suitable work voluntarily without good cause....
 - (2) was discharged for misconduct connected with the insured worker's last work.

8 AAC 85.095 provides in part:

- (c) To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:
 - (1) leaving work due to a disability or illness of the claimant that makes it impossible for the claimant to perform the duties required by the work, if the claimant has no other reasonable alternative but to leave work;
 - (2) leaving work to care for an immediate family member who has a disability or illness;
 - (3) leaving work due to safety or other working conditions or an employment agreement related directly to the work, if the claimant has no other reasonable alternative but to leave work;
 - (4) leaving work to accompany or join a spouse at a change of location, if commuting from the new location to the claimant's work is impractical; for purposes of this paragraph, the change of location must be as a result of the spouse's
 - (A) discharge from military service; or
 - (B) employment;

- (5) leaving unskilled work to attend a vocational training or retraining course approved by the director under AS 23.20.382, only if the claimant enters the course immediately upon separating from work;
 - (6) leaving work in order to protect the claimant or the claimant's immediate family members from harassment or violence;
 - (7) leaving work to accept a bonafide offer of work that offers better wages, benefits, hours, or other working conditions; if the new work does not materialize, the reasons for the work not materializing must not be due to the fault of the worker;
 - (8) other factors listed in AS 23.20.385(b).
- (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....

AS 23.20.385(b) provides, in part:

- (b) In determining whether work is suitable for a claimant and in determining the existence of good cause for leaving or refusing work, the department shall, in addition to determining the existence of any of the conditions specified in (a) of this section, consider the degree of risk to the claimant's health, safety, and morals, the claimant's physical fitness for the work, the claimant's prior training, experience, and earnings, the length of the claimant's unemployment, the prospects for obtaining work at the claimant's highest skill, the distance of the available work from the claimant's residence, the prospects for obtaining local work, and other factors that influence a reasonably prudent person in the claimant's circumstances.

CONCLUSION

The first matter before the Tribunal is whether the claimant voluntarily quit work or whether she was discharged. A discharge is "a separation from work in which

the employer takes the action which results in the separation, and the worker does not have the choice of remaining in employment." 8 AAC 85.010(20). Voluntary leaving means a separation from work in which the worker takes the action which results in the separation, and the worker does have the choice of remaining in employment. Swarm, Com. Dec. 87H-UI-265, September 29, 1987. Alden, Com. Dec. 85H-UI-320, January 17, 1986.

The claimant in this case did not intend to quit working. The employer ended the relationship on October 24, 2025. The separation is a discharge. The Tribunal will consider whether the claimant was discharged for misconduct.

Work attendance is a commonly understood element of the employment relationship. Employers have the right to expect that workers will comply with scheduling agreements.

In Tolle, Comm. Dec. 9225438, June 18, 1992, states, in part:

Unexcused absence or tardiness is considered misconduct in connection with the work unless there is a compelling reason for the absence or tardiness and the worker makes a reasonable attempt to notify the employer.

The claimant depended on a coworker for her transportation to work and the coworker did not pick her up, apparently due to miscommunication. The claimant had no method to contact the employer so she walked to a store some distance away to call in as soon as she could. It was not established that the claimant was warned her job was in jeopardy due to her tardiness. The Tribunal finds that the claimant did not willfully disregard the employer's interests.

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. Boynston 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 dispute the right of an employer to discharge an employee that does not meet their standards; however not all such discharges rise to the level of misconduct. The claimant in this case was discharged for reasons other than misconduct. The penalties of AS 23.20.379 are not appropriate in this case.

DECISION

The determination issued on February 17, 2026, is **REVERSED**. Benefits are **ALLOWED** for the weeks ending November 1, 2025, through December 6, 2025, 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 March 20, 2026.



Rhonda Bunes, Appeals Officer