

**ALASKA DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
OFFICE OF THE COMMISSIONER
PO BOX 111149
JUNEAU, ALASKA 99811-1149**

**DECISION OF THE COMMISSIONER OF LABOR
Docket No. 23 0342**

IN THE MATTER OF:

CLAIMANT:

DEREK MORRIS
[REDACTED]
[REDACTED]

EMPLOYER:

HERBAL OUTFITTERS LLC.
[REDACTED]
[REDACTED]
[REDACTED]

The claimant appealed to the Department from a Tribunal decision mailed on May 25, 2023, that affirmed a division determination denying the claimant's benefits under AS 23.20.379, due to the reasons for the claimant's discharge.

In his appeal to us, the claimant argues several points that were not relevant to the decision under appeal. As there were no changes or modifications made to the division's determination review by the Department is not a matter of right. However, the Department accepted the claimant's appeal at its own discretion.

After a full review of the case, including the audio recording of the hearing, we found the Tribunal allowed an excessive amount of irrelevant testimony that confused the issues of the case. The issue before the Tribunal was to determine only whether the claimant was discharged for work-related misconduct and whether any penalties should be imposed on his benefit claim.

AS 23.20.379(a) states: 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 was discharged for misconduct connected with the insured worker's last work.

8 AAC 85.095(d)(1) provides that misconduct connected with work means a claimant's conduct on the job if the conduct shows a willful and wanton disregard of the employer's interest, such as 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.

8 AAC 85.095(d)(2) provides that to find misconduct connected with the work for off-the-job conduct means the claimant's conduct showed a willful and wanton disregard of the employer's interest and either has a direct and adverse impact on the employer's interest or makes the claimant unfit to perform the job duties.

The following facts provide the basis for a decision on whether the claimant's remarks to the employer constitute misconduct related to work and whether a penalty should be imposed on the unemployment insurance claim.

We find the boundaries of the working relationship and personal relationship between the parties had become indistinguishable. The claimant was allowed to believe he was part of the employer's close friends and family and was allowed to interact with the owner accordingly.

On April 3, 2023, while on personal leave, the claimant called the employer and asked to stop by his home and discuss his upcoming nuptials. The discussion about the wedding turned into an argument about other personal matters. During this heated discussion, the claimant made derogatory remarks about the owner's wife, stating she was known for reneging on her promises. The employer became angry and told the claimant to get out of his house. There was some dispute about the date the claimant was discharged; however under the circumstances it does not change the reason for the discharge and was largely irrelevant.

The claimant believed he was on medical leave until April 6, 2023. When he returned to work that day, he learned he had been terminated for the event on April 3, 2023.

"We have previously held in similar cases that although profane abuse is certainly misconduct, not every intemperate remark to a supervisor is. Some sensible line must be drawn. In Albrecht, Comm'r Dec. 87H-UI-302, IC Unemp. Ins. Rptr. (CCH), AK 8146.15, December 21, 1988." In Smith, Comm'r Dec. No. 9321739, June 30, 1993.

The argument occurred outside of the workplace while the claimant was on leave. Therefore, on-the-job misconduct was not established. The claimant's comments did not seriously affect the employer's interests, nor did they make the claimant unable to perform the work duties. Therefore, off-the-job misconduct was not established.

Furthermore, while the claimant's remarks may have been inappropriate, they were not so egregious under the circumstances that they warranted immediate termination from employment. Therefore, misconduct in connection with the work was not established under AS 23.20.379, which is relevant only to the claimant's eligibility for unemployment insurance benefits.

The Division Appeal Tribunal decision issued on May 25, 2023, is **REVERSED**.

FURTHER APPEAL may be had from this decision by filing a Notice of Appeal in Superior Court for the State of Alaska within 30 days from the date of mailing of this decision as provided in AS 23.20.445, AS 44.62.560-570 and the Rules of Appellate Procedure of the State of Alaska. Unless an appeal is filed within the said 30-day period, this decision is final.

Dated and Mailed on July 19, 2023.



**CATHERINE MUÑOZ,
ACTING COMMISSIONER**