****

**APPEAL TRIBUNAL DECISION**

**Docket number:** 19 0952 **Hearing date:** October 24, 2019

**CLAIMANT: EMPLOYER:**

TIMOTHY WILLIAMS LEASK MINI MART LLC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Timothy Williams Vicky McGilton

 Janis Saber

## CASE HISTORY

The claimant timely appealed a September 13, 2019 determination which 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 work for the employer on about April 9, 2019. He last worked on August 23, 2019. At that time, he worked full time as a cook.

The claimant had been verbally warned that his attendance was not satisfactory. On about June 26, 2019 the claimant was warned by his manager that he may be let go if his attendance did not improve. When the claimant did not attend work as scheduled, other staff had to be shuffled and some shifts were left shorthanded.

The claimant traveled to Ketchikan after work for social reasons. He was scheduled to work at 10:00 am the next day. The claimant could have taken a scheduled flight home at 7:30 am but he did not plan to take that flight because he thought a friend would give him a ride home by boat. The claimant learned at about 8:00 am that his friend was busy and could not take him by boat. The claimant went to the airline to get a seat on a 9:00 flight. The claimant had not booked a seat on that flight. The flight was cancelled because there were not enough passengers.

The claimant contacted the employer to let them know he would be late since the 9:00 am flight was cancelled. The manager told the claimant not to come in because he was 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...

 (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 in this case was discharged when informed the employer he would be late for work.

Work attendance is a commonly understood element of the employment relationship. It need not be defined in a company policy in order to require compliance. And it is so important that a single breach can amount to misconduct connected to the work.

In Tolle, Com. Dec. 9225438, June 18, 1992 the Commission of Labor 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.*

In situations where a worker has been warned that further absence or tardiness could result in dismissal, it is necessary to examine the reason for the specific absence and the worker’s ability to control it.

The claimant in this case had been placed on notice that his job was in jeopardy due to his attendance. He knew he was scheduled to be at work at 10:00 am but he did not attempt to take the 7:30 am flight because he believed a friend could give him a ride or he could take a 9:00 am flight. The claimant did not make sure that either option was available to him by ascertaining whether the boat ride was available or by reserving a seat on the 9:00 am flight.

The claimant had the ability to be at work on time by taking the 7:30 am flight. His failure to be at work was not for a compelling reason and was a willful disregard of the employer’s interests. The Tribunal finds the claimant was discharged for misconduct connected to his work.

**DECISION**

The determination issued on September 13, 2019 is **AFFIRMED.** Benefits remain **DENIED** for the weeks ending August 31, 2019 through October 5, 2019. The three weeks remain reduced from the claimant’s maximum benefits. The claimant may not be eligible 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 October 29, 2019.

 Rhonda Buness, Appeals Officer