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**APPEAL TRIBUNAL DECISION**

**Docket number:** 20 0296 **Hearing date:** April 15, 2020

**CLAIMANT: EMPLOYER:**

BARRY CLARK UNISYS CORP

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Barry Clark None

## CASE HISTORY

The claimant timely appealed a March 25, 2020 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 September 23, 2019. He last worked on February 28, 2020. At that time, he worked full time as a field service technician.

The claimant was warned in November or December that his absences were placing his job in jeopardy. He was advised the employer would consider that the claimant had abandoned his job if he was absent again.

The claimant suffers from PTSD, for which he is under a doctor’s care. On February 18, 2020, the claimant suffered from an episode of PTSD. During an episode the claimant has continuous nightmares, constantly re-lives the traumatic event that started his PTSD, has panic attacks and cannot think clearly. The claimant continued to be unable to work through February 21, 2020. He notified the employer before his shift each day by email that he was unable to work due to a PTSD episode.

The claimant returned to work on February 24, 2020. The employer asked for a note from the claimant’s doctor. The claimant had an appointment the next day, and said he would get a note. The claimant had an intense meeting with his doctor on February 25, 2020, and forgot to ask for a note due to his emotional state after the appointment.

On February 28, 2020, the claimant was advised he was being discharged for his absence and his failure to provide a note from his doctor. The claimant said he had forgotten and offered to get one immediately, but the employer said it was too late.

## 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 after an absence and following a warning that his absences were placing his job in jeopardy.

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. Additionally, in such cases, an employer may hold a worker to a higher standard of notification. Except in cases where adherence to this would be unreasonable, failure to follow these procedures is misconduct.

The claimant was absent due to a compelling medical reason. He notified the employer each day of his absence. The claimant was willing to comply with the employer’s request to provide a doctor’s note, but forgot it due to the intensity of his doctor appointment.

The regulation above holds that a claimant’s actions are not a willful disregard of the employer’s interests if they are 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. The claimant’s actions in forgetting to provide a note from his doctor was an isolated instance of ordinary negligence which does not rise to level of misconduct.

The Tribunal does not question that an employer may discharge a worker whose attendance does not meet the employer’s standards, however not all such discharges are for misconduct. The Tribunal finds the claimant’s discharge was for reasons other than misconduct and the penalties of AS 23.20.379 are not appropriate.

**DECISION**

The determination issued on March 25, 2020 is **REVERSED.** Benefits are **ALLOWED** for the weeks ending March 7, 2020 through April 11, 2020, 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 April 15, 2020.

Rhonda Buness, Appeals Officer