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**APPEAL TRIBUNAL DECISION**

**Docket Number:** 20 1038 **Hearing Date:** August 25, 2020

**CLAIMANT: EMPLOYER:**

SCOTT J CARSON TAYLORED CONSTRUCTION SV

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Scott Carson Amy Costello

#### **CASE HISTORY**

The claimant timely appealed a July 13, 2020 determination which denied benefits under Alaska Statute 23.20.379. The issue is whether the claimant voluntarily quit suitable work without good cause or was discharged for misconduct connected with the work.

**FINDINGS OF FACT**

The claimant began work for the employer in July 2019. He last worked on April 23, 2020. He worked as a lead carpenter/foreman for the employer. The work was located mainly in Wasilla, Alaska.

In early March, 2020, the claimant was warned about leaving the work site early without his supervisor’s permission. At his hearing, the claimant admitted he had done so on that occasion.

On April 23, 2020, the claimant was working alone on a restoration project. The list of estimated tasks and time are found in Exhibit 31. The employer realized the claimant had put in only 11 hours of work with nearly 30 hours left to perform. At the same time, the employer was removed from the project by the owner of the premises being restored. The owner was unhappy with the drywall installation and texturing. The claimant was aware of a problem with the texturing but was told by Brian, the job estimator, that he would get someone in to fix the texturing.

The claimant was terminated for his failure to attend to work and for failure to notify his immediate supervisor he was leaving the worksite. The claimant said that if there was no work to be performed (for example, in this case waiting for the drywall texturing to dry) he would clock out and leave without notifying his supervisor. He pointed out that his timecard was clocked in to his supervisor immediately and that he would know when he left. He believed he was required to notify his supervisor about leaving *only where they was work left to be performed*. He further believed that, as the only person on a project, he was in the best position to judge whether there was such work left at any particular time.

## 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 allegedly for a failing to contact his employer for permission to leave the worksite.

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.*

The claimant did fail to seek the employer’s permission to leave work, which led to his discharge. He was the sole employee onsite and was in the best position to determine the work status. His distinction of leaving work without permission if nothing could be done at least did not over charge the employer.

It should be noted the claimant’s texturing was the main reason for the loss of the project by the employer.

Tribunal holds the claimant’s actions did not rise to the level of a willful disregard of the employer’s interests.

**DECISION**

The determination issued on July 13, 2020 is **REVERSED.** Benefits are **ALLOWED** for the weeks April 25, 2020 through May 30, 2020, if otherwise eligible. The three weeks are not reduced from 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 September 1, 2020.

Michael Swanson, Appeals Officer