

**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 0490 **Hearing date:** August 30, 2021

**CLAIMANT: EMPLOYER:**

JAMES RANDOLPH PROVIDENCE HEALTH & SERVICES AK

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

James Randolph Stephanie Rider

Lisa Paradis

## CASE HISTORY

The employer timely appealed a February 11, 2021 determination which allowed he claimant’s benefits without penalty 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 January 1, 2020, when the employer took over the claimant’s previous employer. The claimant last worked on October 12, 2020. At that time, he worked full-time as a cook.

On October 5, 2020 the claimant did not take his usual 30-minute lunch break because he was too busy due to his area being short-handed, and he then left work early to make up for it. The claimant’s supervisor frequently allowed the claimant to leave early if his work was done. The claimant turned in his electronic timesheet on October 11, 2020, and he noted that the employer’s timeclock systems showed that he had accrued overtime October 5, 2020. The claimant was aware overtime without permission was a violation of the employer’s policy. The claimant had been warned on August 24, 2020 not to accrue overtime without prior permission, and that his job was in jeopardy. The claimant intended to bring the overtime his supervisor’s attention to see if his timesheet could be adjusted, but the supervisor did not work on Sundays.

On Monday, the claimant asked to speak to his employer first thing in the morning, but his supervisor was busy and asked him to wait until later. The claimant was again very busy all day and did not have a chance to speak to his supervisor. At the end of his shift, the claimant’s supervisor advised the claimant he was being discharged because he accrued overtime without prior permission. The claimant explained the circumstances, but the supervisor told him it was too late to fix the issue. The claimant took his personal items and left.

## 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 for working overtime without preapproval after being warned about that policy violation just over a month earlier. The claimant held he did not work overtime when the timeclock indicated he did, but the timeclock needed to be adjusted by a supervisor.

*When a worker has been discharged, the burden of persuasion rests upon the employer to establish that the worker was discharged for misconduct in connection with the work. In order to bear out that burden, it is necessary that the employer bring forth evidence of a sufficient quantity and quality to*

*establish that misconduct was involved.* Rednal, Com. Dec. 86-UI-213, August 25, 1986.

*Uncorroborated hearsay evidence must normally be given less weight than that of the sworn testimony of eyewitnesses to an event. Only if first-hand testimony is clearly not credible, should hearsay statements be considered more reliable.* Weaver, Com. Dec. 96 2687, February 13, 1997.

The claimant provided sworn testimony that he did not work overtime and that he tried to get his supervisor to adjust his timesheet to reflect that he did not work overtime. The employer’s representative did not establish that the claimant’s actions were a willful disregard of the employer’s interests and rose to the level of misconduct connected to the work.

The Tribunal does not dispute an employer’s right to discharge a worker that does not meet its standards, but not all such discharges are for misconduct. The Tribunal concludes the claimant in this case was discharged for reasons other than misconduct. The penalties of AS 23.20.379 are not appropriate.

**DECISION**

The determination issued on February 11, 2021 is **AFFIRMED.** Benefits remain **ALLOWED** for the weeks ending October 17, 2020 through November 2, 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 7, 2021.

Rhonda Buness, Appeals Officer