**APPEAL TRIBUNAL DECISION**

**Docket number:** 21 0623 **Hearing date:** September 28, 2021

**CLAIMANT: EMPLOYER:**

TALINA JUDD ARCTIC INSTALLERS INC

**CLAIMANT APPEARANCES: EMPLOYER APPEARANCES:**

Talina Judd None

## CASE HISTORY

The claimant timely appealed a March 30, 2021 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 in August 2020. She last worked on March 3, 2021. At that time, she worked full-time as a driver.

The claimant had to leave work early on March 3, 2021 to pick up her daughter from school. The claimant’s daughter was required to quarantine for two weeks because of a close contact with the COVID-19 virus. The claimant called the owner and informed him that she could arrange for other care for her daughter and she could return the next day after getting a negative COVID-19 test. The owner told the claimant she could not return until after a two-week quarantine.

On Monday, March 8, 2021, the claimant received a text message from the owner that her services were no longer needed. He did not explain to the claimant why she was discharged.

Documents in the record show the employer told the Division that the claimant was discharged because she failed to complete daily vehicle inspections, and the vehicle she was driving was damaged because the oil was not changed when required. The claimant held that she did do a daily inspection of the vehicle, and when she first started, she used a tablet provided by the employer to log the inspections. The claimant was not given a log-in for the program to log her vehicle inspections, she was instructed to use the owner’s log in. Later, the claimant’s tablet was given to another employee by the owner. The claimant still inspected her vehicle, but did not log the inspections. She verbally reported vehicle issues to the owner, and recalled that she had informed the owner that the vehicle needed an oil change weeks before she was discharged. The claimant was not warned that she was not properly documenting inspections or that her job was in jeopardy.

## 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 while she was quarantined because of her child’s COVID-19 contact. The employer told the Division that the claimant was discharged for performance issues.

*Misconduct cannot be established on the basis of unproven allegations. Cole, Com. Dec. 85HUI006, January 22, 1985.*

*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. 86H‑UI-213, August 25, 1986.*

The decision in this matter turns on the weight of the evidence. In Weaver, Com. Dec. 96 2687, February 13, 1997. The commissioner has held in part:

*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.*

In Douglas, Com. Dec. 85H-UI-069, April 26, 1985, paraphrasing AS 44.62.460(d), the commissioner held in part:

*“Hearsay evidence may be used to supplement or explain direct evidence but is, by itself, insufficient to support a finding unless that evidence would be admissible over objection in a civil action”.*

The employer did not appear in the hearing, standing on the hearsay documents in the record. The claimant provided credible sworn testimony that she inspected her vehicle and informed the owner of issues needing attention, including the need for an oil change. The employer’s hearsay evidence does not establish that the claimant’s actions rose to the level of misconduct as described in Regulation 8 AAC 85.095(d), above.

The Tribunal does not question an employer’s right to discharge a claimant that does not meet its standards, but such a discharge is not always for misconduct. The Tribunal finds the claimant in this case was discharged for reasons other than misconduct and thus the penalties of AS 23.20.379 are not appropriate.

**DECISION**

The determination issued on March 30, 2021 is **REVERSED.** Benefits are **ALLOWED** for the weeks ending March 13, 2021 through April 17, 2021, 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 October 6, 2021.

 Rhonda Buness, Appeals Officer