

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

In the Matter of)
)
SHANEKA JORDAN) OAH No. 21-2257-LUI
) Agency No. 21 0999 ER 16
_____)

APPEAL DECISION (SEPARATION)

Docket Number: 21 0999 ER 16

Hearing Date: December 28, 2021

CLAIMANT APPEARANCES:

Shaneka Jordan

EMPLOYER APPEARANCES:

Laurie Kuntz (rep.)
Bonni Brooks (witness)
Bobby Hanson (observer)

CASE HISTORY

Fountainhead Development, Inc. is an employer that operates Sophie Station Suites in Fairbanks. Fountainhead timely appealed a May 25, 2021 determination that found that Shaneka Jordan, though discharged from her job at Sophie Station Suites, was not discharged under circumstances showing willful disregard for her employer’s interest. Based on that finding, the determination declined to impose a disqualification under AS 23.20.379(a)(2). Notice of the decision was mailed on May 26, 2021, and Fountainhead appealed the following week.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in October of 2021. Under the agreed terms of referral, an administrative law judge hears and decides the appeal under procedures specific to UI appeals. AS 44.64.060 procedures do not apply.

The matter was heard in a recorded hearing on December 28, 2021. Bonni Brooks, the General Manager of Sophie Station Suites, testified under oath, as did Ms. Jordan. The issue presented at hearing was whether Ms. Jordan departed from her job at the hotel under circumstances that should trigger a disqualification.

FINDINGS OF FACT

Shaneka Jordan worked as a housekeeper at Sophie Station from October 2020 until January 24, 2021. She was terminated on February 2, 2021 for job abandonment after three consecutive no call/no show absences on the three preceding days.

At the hearing, it was established that Ms. Jordan had chronic attendance problems beginning on January 15, 2021. Prior to the final three entirely missed shifts, she did call in for some of her absences, although the calls were not always timely.

During this period, it is undisputed that Ms. Jordan had three unexplained seizures during her off-work hours. Although not aware of the details, the hotel knew that

there were seizures and other health concerns, and encouraged her to get professional care.

The more detailed history of Ms. Jordan's seizures is that she apparently had a single event in 2019. She hoped the problem was behind her, but the three seizures in quick succession in January 2021 were disturbing. They were major seizures, one of which resulted in physical injury. Ms. Jordan does not seem to be a firm believer in conventional medicine, but she eventually saw a neurologist, who told her in March of 2021 that she may need to be on disability for a while. As of the time of the hearing, follow-up testing has still not been completed. In the meantime, Ms. Jordan has applied to go back to work for Fountainhead.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

AS 23.20.379(a) - Voluntary Quit, Discharge For Misconduct, and Refusal of Work

- (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...
 - (1)
 - (2) was discharged for misconduct connected with the insured worker's last work.

8 AAC 85.095 - Voluntary Quit, Discharge for Misconduct, and Refusal to Work

- (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 wilful and wanton disregard of the employer's interest, as a claimant might show, for example, through gross or repeated negligence, wilful 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; wilful 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;

* * *

APPLICATION

The hearing in this case established beyond question that Ms. Jordan sufficiently violated her employer's attendance policy to justify termination. There is no evidence that her employer acted wrongfully or unfairly toward her.

The standard for imposing a disqualification is different, however. It must be shown that Ms. Jordan did not merely have unsatisfactory attendance. It has to be shown that she showed “a wilful and wanton disregard of the employer's interest.” In the context of three mysterious and potentially dangerous seizures which were later found to be potentially disabling, it cannot be said that her disregard for her employer was wilful and wanton. She certainly should have communicated better with her employer, but her confusion and lack of responsibility during this period does not rise beyond ordinary negligence. DETS correctly assessed this situation.

DECISION

The employer’s appeal is not sustained. The Division’s May 25, 2021 decision is **AFFIRMED**.

DATED January 4, 2022.

[REDACTED]

Christopher Kennedy
Administrative Law Judge

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.

CERTIFICATE OF SERVICE

I certify that on January 4, 2022, this document was sent to: Shaneka Jordan (by mail and by email to [REDACTED]); Laurie Kuntz (by email to [REDACTED]); Fountainhead Development, Inc. (by mail); DETS UI Appeals Team (by email); DETS UI Technical Team (by email).

[REDACTED]
Office of Administrative Hearings



*Alaska Department of Labor and Workforce Development
Appeals to the Commissioner _*

Please read carefully the enclosed Appeal Tribunal decision. Any interested party (claimant or the Division of Employment and Training Services [DETS]) may request that the Commissioner accept an *appeal* against the decision (AS 23.20.430-435 and 8 AAC 85.154-155).

A Commissioner appeal must be filed within 30 days after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A Commissioner appeal must be in writing and must fully explain your reason for the appeal. You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner appeals *to the Commissioner's Hearing Officer* at the address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present *written argument* to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an *oral argument*. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

**ALASKA DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
COMMISSIONER'S HEARING OFFICER**

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