



APPEAL TRIBUNAL DECISION

Docket number: 22 0147 **Hearing date:** June 15, 2022

CLAIMANT:

JAMES PAYNE

EMPLOYER:

STATE OF ALASKA, DEPARTMENT OF
TRANSPORTATION & PUBLIC FAC

CLAIMANT APPEARANCES:

James Payne

EMPLOYER APPEARANCES:

None

DETS APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a January 12, 2022 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 May of 2011. He last worked on October 21, 2021. At that time, he worked full time as a steward.

The claimant worked aboard seagoing vessels, performing a variety of tasks, such as night cashier, cook, and retail sales. All employees were required to have and maintain a current Merchant Mariner Credential (MMC), issued by the Coast Guard, in order to perform their job duties on the ships. These credentials expire and must be renewed every five years. To renew the credential, several appointments are required and the process can take up to six weeks.

As a result of industry-wide delays and difficulties with obtaining medical appointments during the COVID-19 pandemic, the Coast Guard offered an extension of time to employees whose MMC card was due to expire in April of

2021. The six month extension allowed each employee until October 31, 2021 to renew their credentials and remain in compliance.

The claimant's MMC credential was set to expire April 30, 2021. He was aware of the expiration date, as he had renewed his credential previously, well in advance of the required date. The claimant resides in Juneau, Alaska and was stationed in Ketchikan, Alaska during the months of January through March of 2021. Being stationed outside his home port, he did not have access or ability to schedule or participate in the medical appointments required for renewal of his MMC credential.

The claimant's wife scheduled the necessary doctor's appointment for him to coincide with his very first block of leave that was set to occur in mid-April, 2021. As that appointment approached, the claimant received orders to board a different vessel and begin work during his leave time. He had to cancel that appointment and reschedule for the earliest available, which was June, 2021.

The claimant did receive an unexpected leave of absence in May, 2021 when a separate credential, his TWIC card, expired. He was contacted by the dispatch office for his employer and informed that he couldn't work until the card was renewed. The claimant renewed that credential, after some delay, and returned to work immediately upon receiving it. He attempted to arrange an appointment with his doctor to also complete his other requirements, but was unable to do so.

The claimant brought his concerns regarding needing time off in order to attend his appointments and get his credential renewed to the attention of his supervisor, beginning in April, 2021. He re-doubled his communication efforts in July, August and September, as he felt that time was running out. He reached out to the union dispatch office on several occasions regarding the matter, and was told that things were being looked-into. Once he had boarded a vessel, he could not leave the ship until someone arrived to relieve him. Due to short staffing, there was often no one available to provide that relief and the claimant worked extensive overtime and lengthy periods without his usual scheduled days off work.

The claimant believed that because his employer was scheduling him for shifts, and because the employer was aware that he needed time off in order to complete the required appointments, that he would be granted leniency in the event of a delay in the renewing of his MMC credential. The claimant did not receive any warnings from his employer by mail or by phone in the months leading up to November, 2021. He later learned that his employer had emailed him several times while he was on board the ship, warning him of the expiration of his MMC card. The claimant states that he had no internet access and therefore no email access while he was away from port and on board the marine vessel.

The claimant was able to complete all appointments and submit all required documentation to the Coast Guard on October 25, 2021, following his return to port. On November 21, 2021, the claimant received his renewed MMC card from

the Coast Guard. That same day, he received a letter from his employer notifying him of the termination of his employment due to his credential expiring October 31, 2021.

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

"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, Comm'r Dec. 86H-UI-213, 8/25/86.

The employer did not participate in the hearing. The employer's documentary evidence is considered hearsay evidence, unsupported by sworn testimony of the claimant's supervisors or co-workers. Hearsay evidence is insufficient to overcome direct sworn testimony.

The claimant in this case credibly testified that he was aware of the requirement to renew his credentials and that he made every effort to do so ahead of the deadline. He missed the deadline because he believed that it was in the best interest of his employer for him to work the shifts that had been assigned to him in order to help maintain staffing levels that allowed the ships to operate.

The claimant had reason to believe that the employer would extend leniency, considering that he was required to work extensively through the busiest season and not provided time off to attend his appointments. There is no indication that the claimant willfully chose to disregard the requirement to renew his credentials.

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 January 12, 2022 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending November 27, 2021 through January 1, 2022, 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 June 16, 2022.

Solara Ames

Solara Ames, Appeals Officer