

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

In the Matter of)
)
GLENN W. PETERS) OAH No. 22-0532-LUI
) Agency No. 22 0034 16
_____)

APPEAL DECISION (SEPARATION)

Docket Number: 22 0034 16

Hearing Date: July 26, 2022

CLAIMANT APPEARANCES:

EMPLOYER APPEARANCES:

Glenn W. Peters

None

CASE HISTORY

Glenn Peters worked for Southcentral Foundation for about three years prior to being discharged on October 15, 2021. On December 22, 2021 the Division of Employment and Training Services (DETS) made a determination that Mr. Peters had been discharged from his job for misconduct. Based on that finding, the determination imposed a disqualification and benefit limitation under AS 23.20.379(a) and (c). Notice of the decision was mailed on December 23, 2021. Mr. Peters appealed two weeks later.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in May of 2022. 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 July 26, 2022. Mr. Peters appeared and testified under oath. The employer did not designate a contact for the hearing,¹ and a call to its main contact line yielded a receptionist who was unable to direct a call to a person who could participate.

The single issue presented at hearing was whether Mr. Peters's employment ended under circumstances that should trigger a disqualification and benefit limitation under AS 23.20.379.

FINDINGS OF FACT

Glenn Peters is a mature gentleman who began working for Southcentral Foundation (SCF) in 2018. In the period leading up to his separation, he was

¹ The employer had told OAH staff that if it wanted to participate in the hearing, it would let OAH know by the day before the hearing. It did not get back in touch.

working full time as a Learning Circle Associate.

On July 8, 2021, SCF issued a requirement for employees to receive Covid-19 vaccinations by October 15, 2021. The policy was internal to SCF. It had nothing to do with any government vaccination mandate.²

Mr. Peters declined to take the vaccination. He declined because he believes the vaccination is made with “aborted human cells.” While this is not true as a matter of science, I find, based on his credible testimony, that he genuinely believed it to be true and continues to believe it to be true.

Mr. Peters testified that he sought a religious exemption from SCF, but SCF declined to grant the exemption. In an unsworn submission to DETS, SCF reports that Mr. Peters did not request a religious exemption.³ However, SCF chose not to participate in the hearing and hence did not carry its evidentiary burden on this issue. I must conclude that Mr. Peters did, in some fashion, seek a religious accommodation but was unsuccessful.

On October 15, 2021, Mr. Peters was separated from SCF for failure to be vaccinated. Mr. Peters reports that he was told he would be rehired once the vaccination requirement no longer applies. That has not yet occurred.

SCF recorded the separation as a voluntary quit. However, the separation was mandatory for those who were not vaccinated. DETS correctly found that this was a forced resignation—that is, a discharge—for failure to follow a company policy.

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) left the insured worker's last suitable work voluntarily without good cause....
 - (2) was discharged for misconduct connected with the insured worker's last work.

2 Ex. 1, p. 6.

3 Ex. 1, p. 4.

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 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....

APPLICATION

As discussed above, this was a discharge. Beginning with the Commissioner Decision in *In re Rednal*, 86H-UI-213 (1986), and continuing with subsequent decisions,⁴ the department has taken the following approach regarding whether there is grounds for disqualification under AS 23.20.379(a):

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 sufficient quantity and quality to establish that misconduct was involved.

The burden is a heavy one, moreover, because "misconduct" in this context is not ordinary malfeasance or breach of protocol. It is instead defined as "a willful and wanton disregard of the employer's interest." Lesser conduct--"incapacity, inadvertence, ordinary negligence in isolated instances, or good faith errors in judgment"—is expressly excluded from the definition of "misconduct" in 8 AAC 85.095(d), quoted in the previous section.

In this case, the employer did not participate in the hearing. The evidence we do have indicates that Mr. Peters refused the vaccine due to a sincerely-held misunderstanding of how the vaccine is manufactured, which he believed to

⁴ *E.g.*, *In re Ecker*, 07 0530 (DLWD Appeal Tribunal 2007); *In re Mendonsa*, Comm'r Dec. 04 0577 (2004).


be inconsistent with his religious beliefs. He sought, but was denied, a religious accommodation. He worked until the final day before the vaccine policy went into effect, and then accepted his separation as a result of not complying with a policy he believed to be contrary to his religion.

In these circumstances, the employer has failed to meet its burden of proving willful and wanton behavior. While there may well have been a good business reason for the separation, it has not been shown to represent “misconduct” of the kind that would disqualify a discharged worker from benefits.

DECISION

The employee’s appeal is sustained. The Division’s December 22, 2021 decision is **REVERSED**. No disqualification under AS 23.20.379(a), nor any benefit limitation under AS 23.20.379(c), may be imposed for the claimant’s separation from the Southcentral Foundation.

DATED July 29, 2022.




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 August 1, 2022, this document was sent to: Glenn Peters (by mail and by email); Southcentral Foundation (by email); DETS UI Appeals Team (by email).



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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