



APPEAL TRIBUNAL DECISION

Docket number: 23 0254 **Hearing date:** April 27, 2023

CLAIMANT:

CASSANDRA TUCKER
[REDACTED]
[REDACTED]

EMPLOYER:

PALMER-WASILLA HEALTH SYSTEM LLC
[REDACTED]
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Cassandra Tucker

EMPLOYER APPEARANCES:

Adrian Stauffer

CASE HISTORY

The claimant timely appealed a March 7, 2023 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 2018. She last worked on February 16, 2023. At that time, she worked two days per week as an obstetrics technician.

The claimant had transferred to a new position in the employer's obstetric department on January 11, 2023. In the 35-day period the claimant was in her new job, the employer noted the claimant had had strong skills as a scrub technician in the operating room, but found she was not quickly picking up skills she needed in her new position. The claimant believed her issues were due to 3-4 charge nurses telling her to do things differently each shift. It was reported to the director that required items were missing in delivery rooms which the claimant was responsible to stock. The claimant held that each room had a slightly different list and when she asked about the differences, she was told there would be an effort to match the lists up so they would be the same. The claimant also held that she was not the only employee stocking the delivery rooms, as she only worked two days per week.

The director heard reports from nurses that the claimant was frequently away from her work area and was hard to find when needed. The claimant recalled being advised once by a charge nurse that she needed to come to the front desk more often, so she did. The claimant held that she came to the front desk to check in with the nurses every 30-60 minutes and she always carried a phone with her when working on stocking rooms. The claimant was not warned that her job was in jeopardy.

The day before the claimant was discharged, the employer had an emergency situation in a delivery room. A nurse called the claimant's phone because items were missing from the delivery room. The nurse reported that the claimant answered the phone, and the nurse realized the claimant was in the delivery room, which was busy. The claimant then hung up the phone walked out of the delivery room without asking the nurse what she wanted. The claimant recalled that she had left the room because the midwife in charge of the delivery had instructed her to quickly get emergency c-section supplies from an operating room, which she did.

The employer decided that the claimant's failure to quickly learn skills and failure to communicate clearly with the nurses was a potential safety issue in the department, and because claimant was in a probationary period, it was decided to discharge her. The director advised the claimant on February 16, 2023 that she was discharged because her performance did not meet the employer's standards.

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 because the employer did not believe the claimant was learning the duties of her new job and the employer felt the claimant was not communicating with the nurses properly which could lead to safety issues.

The Division's Benefit Policy Manual, in Misconduct, 300.05 holds:

A worker is expected to perform the work to the best of the worker's ability. However, a failure to perform the work is not misconduct, if it is "isolated instances of poor judgment, good faith errors, unavoidable accidents, or mere inefficiency resulting from lack of job skills or experience."

Example: A claimant was discharged from his job for failure to perform the work to the employer's satisfaction. He was unable to retain instructions, and on several occasions had accidents with the forklift. The employer felt that his inability to follow instructions created a safety hazard. The Tribunal held that the claimant was simply unable to do the work, and there was no misconduct involved. (98 0336, March 10, 1998)

The claimant had been in the new position for 35 days, which equates to approximately 12 shifts. The claimant was given conflicting instructions by different nurses and she found that each delivery room had slightly different equipment lists. The claimant held that she kept in contact with the nurses during her shift as she was instructed and carried her phone so she could always be reached while she was stocking rooms. The employer held that the claimant failed to communicate and act correctly, while the claimant held that she was following instructions from the midwife, who was in charge.

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.

The employer documented the issues with the claimant's performance, but did not establish that the claimant's performance issues during her short tenure in that position were a willful disregard of the employer's interest. The Tribunal concludes

that the claimant's performance failures were the result of inability, which does not rise to the level of misconduct.

The Tribunal finds the claimant in this case was discharged for reason other work related misconduct. The penalties of AS 23.20.379 are not appropriate in this case.

DECISION

The determination issued on March 7, 2023 is **AFFIRMED**. Benefits remain **ALLOWED** for the weeks ending February 25, 2023 through April 1, 2023, 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 April 27, 2023.

A solid black rectangular redaction box covering the signature of the Appeals Officer.

Rhonda Buness, Appeals Officer