



## APPEAL TRIBUNAL DECISION

**Docket number:** 23 0259 **Hearing date:** April 28, 2023

**CLAIMANT:**

KIMBERLY BAASCH  
[REDACTED]  
[REDACTED]

**EMPLOYER:**

BEACON OCCUPATIONAL  
[REDACTED]  
[REDACTED]  
[REDACTED]

**CLAIMANT APPEARANCES:**

Kimberly Baasch

**EMPLOYER APPEARANCES:**

None

### CASE HISTORY

The claimant timely appealed a March 29, 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 on July 5, 2022. She last worked on February 16 or 17, 2023. At that time, she worked full time as a clinic coordinator.

The claimant became sick with flu-like symptoms on February 17, 2023 and was unable to work. The claimant notified the employer each day of her illness as required. On February 24, 2023 the claimant had a positive COVID-19 test. The claimant still felt symptomatic five days after the test. She contacted her doctor, who cleared the claimant to return to work on March 1, 2023. On that date, the claimant still felt sick and she was experiencing brain fog. The claimant sent her supervisor a text message that day, requesting to extend her leave further because she was unable to return that day. The claimant did not get a response from her supervisor. She called and left a voice mail message for the supervisor, but did not get a response.

On March 4 or 5, 2023, the claimant received a notification from the agency that administered her retirement account through the employer that her employment

status had changed. The claimant called the her supervisor and left another voicemail, but she did not receive a response.

The claimant had frequent absences from work before her illness because, as a single mother, she had been required to miss work when her children were ill. She had received written warnings for her absences. The claimant assumed from the notification of employment status change and failure of her supervisor to return her calls that she had been discharged for her continued absences due to her illness.

Documents in the record show the employer reported to the Division that claimant was a no-call, no-show for three days and the employer considered the claimant had abandon her job. The claimant denied that she had failed to contact the employer during her absence.

### **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 missed work because she was ill. The claimant held that she contacted the employer as required. She was notified that the employment relationship had ended when she was contacted about her retirement

account. The employer reported to the Division that the claimant was a no-call, no-show, which ended the employment relationship.

*Hearsay is defined as statements made out of court offered in evidence to prove the truth of the matter asserted. Sellers, Com. Dec. 9320614, April 13, 1993.*

*The letters supplied by the employer from the claimant's supervisor are hearsay and, by themselves, cannot be considered sufficient to overcome the sworn testimony of the claimant absent other, more reliable evidence. We have previously held in similar instances "Where the declarant's unavailability was questionable and there was a reasonable probability that the testimony would yield to cross examination, a decision based solely upon such hearsay would not be based upon substantial evidence." Albrecht, Com. Dec. 87H-UI-302, December 21, 1988.*

*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. Weaver, Com. Dec. 96 2687, February 13, 1997.*

The employer did not appear at the hearing. The claimant provided sworn testimony that she was too ill to work and that she contacted the employer as required to let them know she could not work.

*Unexcused absence or tardiness is considered misconduct in connection with the work unless there is a compelling reason for the absence or tardiness and the worker makes a reasonable attempt to notify the employer. Tolle, Com. Dec. 9225438, June 18, 1992.*

The Tribunal finds that the claimant was discharged for reasons that do not rise to the level of misconduct, therefore the penalties of AS 23.20.379 are not appropriate.

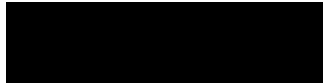
## **DECISION**

The determination issued on March 29, 2023 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending March 11, 2023 through April 15, 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 May 3, 2023.



Rhonda Bunes, Appeals Officer