



APPEAL TRIBUNAL DECISION

Docket number: 23 0309 **Hearing date:** May 17, 2023

CLAIMANT:

KAYLIA BREWER
[REDACTED]
[REDACTED]

EMPLOYER:

CYCLIC PROPERTIES REAL ESTATE FIRM
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Kaylia Brewer

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed an April 17, 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 December 5, 2022. She last worked on March 30, 2022. At that time, she worked full time as an office manager.

The employer considered payday to be the fifth of each month, but the claimant was paid several days after the fifth of the month each month she worked there. This caused the claimant to be late paying her rent and other obligations and she incurred late fees. When the claimant was paid, her check was always dated for the fifth of the month despite not being distributed until days later.

The claimant told the employer about her issues with the late pay, but she was referred from the bookkeeper to one owner and then to the other owner without any satisfaction. The claimant found it difficult to communicate with the owners because they were infrequently in the office. The claimant was advised by the owner to look at her employment contract, but the claimant did not find anything about her pay date stated in the contract.

On her last day of work, the claimant asked the bookkeeper if she could get her paycheck in advance, dated for April 5, 2023. The claimant explained she could show her landlord and other creditors that she would be able to make her payments on that date. The bookkeeper referred the claimant to one of the

owners, as the other owner was out of town. The owner was working from home that morning but was expected to be in the office by about 2:00 pm. The claimant became very frustrated because she felt she was being referred from person to person again and that the employer was unwilling to help fix the financial bind they were putting her in. The claimant's anxiety rose and she told the office staff that she would be leaving for a lunch break as it was a few minutes before noon. The claimant had a scheduled weekly appointment with her therapist in a nearby office from 1:00 to 2:00 pm. The claimant asked the bookkeeper to call her when the owner came into the office so she could discuss her pay situation.

The claimant's therapist recommended the claimant not return to the office that afternoon and suggested the claimant discuss the pay situation with the owner by phone first because the claimant's frustration level was very high which increased her anxiety and decreased her ability to communicate effectively. The claimant's therapist advised that the claimant wait and take the employer's call with the therapist's support. The claimant called the owner several times and left a voice mail message requesting the owner to call back. The claimant waited at her therapists' office until 3:00 without hearing from the owner. The claimant could not wait any longer as the therapist had another appointment. The claimant normally worked until 4:00 pm but she did not return to work because the owner had not contacted her.

After 5:00 pm, the claimant received a text message from the owner, advising the claimant not to come to work the next day, but to report Monday morning. When the claimant arrived at work on April 3, 2023, she was advised she was discharged because she had left the employer's office unattended without letting anyone know. The claimant collected her personal items from the office and left.

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 believed she had left the worksite without notifying anyone.

Misconduct cannot be established on the basis of unproven allegations. Cole, Com. Dec. 85HUI006, January 22, 1985.

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 did not appear at the hearing to provide sworn testimony, standing on the hearsay documents in the record. The claimant provided sworn testimony that she told the office staff where she was going and requested they contact her when the owner was in the office so she could discuss getting her paycheck in advance since her previous checks had been late. The claimant attempted to contact the owner several times that afternoon and her calls were not returned until well after the claimant's work day had ended. The Tribunal finds the employer has not established with sufficient evidence that the claimant's actions were a willful disregard of the employer's interest and rose to the level of misconduct as it is described in regulation 8 AAC 85.095(d).

The Tribunal concludes the claimant was discharged for reason other than misconduct connected to the work. The penalties of AS 23.20.379 are not appropriate.

DECISION

The determination issued on April 17, 2023 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending April 8, 2023 through May 13, 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 18, 2023.



Rhonda Bunes, Appeals Officer