



APPEAL TRIBUNAL DECISION

Docket number: 23 0435 **Hearing date:** July 17, 2023

CLAIMANT:

DARIUS PRIOR
[REDACTED]
[REDACTED]

EMPLOYER:

ALSCO
[REDACTED]
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Darius Prior

EMPLOYER APPEARANCES:

Amanda Morris

CASE HISTORY

The claimant timely appealed a June 2, 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 11, 2022. He last worked on March 29, 2023. At that time, he worked full time as an accounts receivable clerk.

The claimant worked for the employer as a service driver until an injury made him unable to perform the duties required for that work. On January 12, 2023, the claimant was moved to the accounts receivable position. The employer had previously been dissatisfied with the claimant's attendance, but it was hoped that the position change would help the claimant improve his attendance.

The employer was dissatisfied with the claimant's progress in training for the new position. On March 6, 2023, the claimant was placed on a performance improvement plan to correct deficiencies with his posting speed, which took double the time the employer expected, with his assistance to clients on the phone, his lack of completing training and starting to make collection calls, and with failures in monitoring his email. The claimant was advised his job was in jeopardy if his performance did not improve.

The claimant held he did the best he could to speed up his posting without making errors and he tried to get help for clients on the phone as quickly as

possible. The claimant held there was a technical problem with work emails being sent to his personal email instead of his work email and this took a while to resolve. The claimant held that this caused him to miss work emails because he was not accustomed to closely monitoring his personal email. The claimant recalled that five days before the work ended, his supervisor told him to concentrate on making collections calls, so he completed training and focused on that duty for two days. That weekend the claimant came down with a debilitating migraine headache, a condition for which he is under care by a doctor. The claimant worked Monday, but he was unable to focus and went home early and called out Tuesday due to the pain. The claimant scheduled a doctor's appointment for Wednesday, March 29, 2023 during his lunch break.

On March 29, 2023, the claimant was called into a meeting before lunch and advised that he was being let go because he had not made satisfactory progress on the performance improvement plan instituted at the beginning on the month. The employer's representative held in the hearing that the claimant had never been able to complete the duties of accounts receivable clerk to the employer's satisfaction.

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 discharged because he did not meet the employer's standards for performing the work.

In Brown, Com. Dec. No. 9225760, July 6, 1992, the Commissioner states in part:

Negligence is simply the failure to perform duties which the worker understands and is able to perform. It does not necessarily mean that the worker willfully failed to perform the duties. It means simply that the worker was indifferent to whether the duties were performed properly or not.

If the worker is not able to perform the job, there can be no finding of negligence. There should be some clear evidence that the worker is capable of performing the work. In this case, it appears that the claimant simply did not make probation. There is no clear evidence that she was ever able to perform the job satisfactorily. Her employer forthrightly testified that she liked the claimant, that she wanted to try to help her succeed, and that the claimant tried, but she just couldn't seem to do the job.

The claimant may have had a poor attitude, and the employer probably had very good business reasons for discharging him. We conclude, however, that he was discharged for inefficiency resulting from lack of job skills or experience, but not for misconduct connected with the work.

The employer has the right to discharge employees who fail to meet certain standards. The claimant was incapable of performing work to the employer's satisfaction. An inability to do the job does not constitute misconduct in connection with the work. The Tribunal concludes that the claimant was discharged for reasons other than misconduct.

DECISION

The determination issued on June 2, 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 July 21, 2023.



Rhonda Bunes, Appeals Officer