



## APPEAL TRIBUNAL DECISION

**Docket number:** 23 0116 **Hearing date:** April 19, 2023

### CLAIMANT:

HEATHER HINKLE  
[REDACTED]  
[REDACTED]  
  
[REDACTED]  
[REDACTED]  
[REDACTED]

### EMPLOYER:

PURR-FERRED PETFOOD LLC  
[REDACTED]  
[REDACTED]  
  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### CLAIMANT APPEARANCES:

Heather Hinkle  
Isaac Zorea

### EMPLOYER APPEARANCES:

Renee Schneider  
Rob Smeltzer  
Alyssa Freidman

## CASE HISTORY

The claimant timely appealed an October 5, 2022 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.

A hearing was held October 31, 2022, with only the claimant participating. A decision was issued by the Tribunal on November 2, 2022, affirming the Division's determination that the claimant was discharged for misconduct and holding that the penalties of AS 23.20.379 were appropriate. The claimant filed a timely appeal to the Commissioner of the Department of Labor and Workforce Development. On February 15, 2023, the Commissioner issued a decision which vacated the Tribunal decision and remanded the matter for a new hearing with the employer participating.

## FINDINGS OF FACT

The claimant began work for the employer in November 2021. She last worked on August 19, 2022. At that time, she worked full time as a production manager.

On August 17, 2022, the claimant had an issue with an employee she was supervising. It escalated to the point the employee approached the claimant too closely and clenched a fist and called the claimant names. The claimant felt her safety was threatened by the worker and told him he was done and to leave the premises. The claimant recalled that she and the general manager had talked earlier that day about terminating the worker for poor performance at the upcoming end of the season, so the claimant believed she had the authority to fire the employee. The claimant reported to the general manager what had happened. The next day, there was a general staff meeting and workplace violence and harassment were discussed. The claimant was advised by the general manager prior to the meeting not to feel singled out by the subject of the meeting and the incident was not mentioned. That day, the general manager spoke with the other employee involved and several employees that had observed the incident. The general manager decided that both the claimant and the other employee had behaved in a manner that violated the employer's policy requiring workers to treat each other with respect.

On August 19, 2022, the claimant took part of the day off for personal reasons. She was advised that day by text message that the general manager intended to bring the other employee back to work and the manager wanted to meet with the claimant and the worker to mediate a resolution. The claimant advised the employer she would not attend a meeting with the manager and the employee because she was the victim of workplace violence and should not be required to meet with the perpetrator. The claimant told the manager that she had called the State of Alaska Occupational Safety and Health (AKOSH) office and made a complaint. When she learned the claimant had filed a complaint, the general manager decided she should do a more formal investigation to document the matter for possible state inquiries.

On August 21, 2022, in emails sent in the evening, both the claimant and the other employee were advised that they were suspended with pay while the employer looked into the matter. The claimant arrived at work the next morning before she saw the employer's email advising her of her suspension and she was told to leave the worksite immediately.

On August 25, 2022, the claimant was requested to attend a meeting with the general manager. The claimant was counseled for her behavior in the incident on August 17, 2022 and presented a written counseling letter. The general manager pointed out that a few weeks earlier she had observed the claimant yell at a subordinate using an expletive. The general manager had met with the claimant at that time and advised that in the future issues should not be allowed to become elevated on the production floor and should be taken to a meeting off the floor to be resolved. The general manager held that this past incident and the August 17, 2022 incident showed a pattern of discourteous and unprofessional communications between the claimant and other workers. The claimant recalled the after the earlier incident she had apologized to the worker for her behavior and

considered the relationship with that worker was repaired. As part of a corrective action plan following the August 17, 2022 incident, the claimant was advised she was being placed on probation for 30 days and she was required to attend workplace violence training and anger management training in that time. The claimant was given ten days to respond to the employer's counseling and corrective action plan.

The claimant believed it was disrespectful of the general manager to require her to take workplace violence training because the claimant did not believe she was at fault in the incident on August 17, 2022 and was in fact a victim of workplace violence. The claimant believed the employer's discipline of her was retaliation for filing a complaint with a state office. On September 4, 2022, the claimant sent the general manager a letter advising her that the claimant considered the manager's counseling letter to be harassment. The majority of the claimant's letter was devoted to pointing out unprofessional communications of the general manager. In the hearing, the claimant held that she had modeled her letter after the general manager's counseling letter presented with the corrective action plan. In the letter, the claimant stated that she was the victim of workplace violence, and therefore she would not be participating in the employer's corrective action plan and would not take the workplace violence training assigned by the employer. The claimant said the general manager should take the anger management training along with the claimant as a compromise.

Earlier, on August 28, 2022, the general manager had sent a group text advising workers that the plant was closed for maintenance until September 6, 2022. The claimant clarified by text that this meant her as well and the manager affirmed. Having received no other instruction from the employer, the claimant showed up for work on September 6, 2022. She was told she was not allowed on the premises and she should leave immediately. The claimant decided this meant she was not going to be permitted to return to work, and she wanted to collect her personal belongings. She called and requested that local police accompany her on the employer's premises to get her belongings, which they did.

On September 8, 2022, the employer's attorney sent a letter to the claimant advising her that she was discharged effective September 7, 2022 because she had refused to comply with the employer's corrective action plan.

### **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 had an interaction with an employee she supervised and she felt physically threatened by the employee's actions. The employer determined that both the claimant and the other employee had violated their policy requiring employees to treat each other with courtesy and respect. The claimant had recently been verbally warned for disrespectful behavior toward another worker, so the employer decided to place the claimant on probation and implement a corrective action plan requiring the claimant to complete workplace violence and anger management training within 30 days.

*The employer does have the right to set the parameters of the work. Furthermore, insubordination - that is, refusal to obey a reasonable request of the employer - does constitute misconduct. On the other hand, if just cause can be shown for refusing the request, then misconduct may be converted to a nondisqualifying separation. In Vaara, Com. Dec. 85H-UI-184, September 9, 1985.*

The claimant replied to the employer's corrective action plan by stating that she would not comply with the corrective action plan, would not attend workplace violence training and would only attend anger management training if the general manager also attended.

*In a question of whether insubordination constitutes misconduct in connection with a claimant's work, "it is only necessary to show that he [the claimant] acted willfully against the best interests of his employer in*

*order to establish that." Risen, Com. Dec. 86H-UI-214, September 15, 1986. In Risen, the Commissioner also held that when a claimant refuses an employer's instructions, "Such refusal, absent a showing that the employer's request was unreasonable or detrimental to the individual, is misconduct in connection with the work."*

As in Vaara, the employer in this case has the right to set the parameters of the work. It was not unreasonable of the employer to require the claimant to take workplace violence and anger management training after she was involved in two negative events with other employees in a short period. The claimant's belief that it was disrespectful of the employer to require her to attend the training does not establish that it would have been detrimental to the claimant to attend the training and does not excuse her refusal of the employer's requirement. The claimant held in the hearing that she had expected the employer to counter her letter, however the Tribunal finds the wording of the claimant's letter does not invite negotiation, but rather states clearly that the claimant will not comply. The claimant further held that the employer's imposition of a corrective action plan was in retaliation for her report to the state, however she provided no evidence that retaliation was the employer's motivation to discipline her and the employer established the discipline was with a reasonable work-related reason.

The Tribunal finds the claimant's action in refusing to comply with the employer's corrective action plan was insubordinate and rises to the level of misconduct. The penalties of AS 23.20.379 are appropriate in this case.

### **DECISION**

The determination issued on October 5, 2022 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending September 17, 2022 through October 22, 2022. The three weeks remain reduced from the claimant's maximum benefits. The claimant may not be eligible 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 24, 2023.



Rhonda Bunes, Appeals Officer