



APPEAL TRIBUNAL DECISION

Docket number: 23 0535 **Hearing date:** October 27, 2023

CLAIMANT:

ADRIENNE MARTIN
[REDACTED]

EMPLOYER:

ILISAGVIK COLLEG
[REDACTED]

CLAIMANT APPEARANCES:

Adrienne Martin

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a July 27, 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 March 6, 2020. She last worked on February 21, 2023. At that time, she worked full-time as a library technician.

In January 2023, the claimant learned she had a medical condition that may be serious and immediate medical care, which was not available in the claimant's area of residence, was recommended. The claimant submitted a leave requests at the end of January, holding she would be off work January 30, 2023 through February 6, 2023 and February 8, 2023 through March 2, 2023. The claimant submitted a second request for leave from January 23, 2023 through February 17, 2023. The claimant provided a note from her doctor with the request. The claimant departed immediately to seek medical care.

On January 31, 2023, the employer sent an email to the claimant's work email notifying her that her leave for January 23, 2023 through January 31, 2023 was approved. The email advised the claimant she would be required to submit another request for leave after January 31, 2023 and no leave was approved after January 31, 2023. The claimant did not access her work email during her travel. The claimant sent an email to the employer from her personal email address on February 7, 2023, stating that she would return to work on January 20, 2023. In

the email, the claimant advised her supervisor that she was unable to access her work email. On February 10, 2023, the claimant advised the employer, again from her personal email address, that she had contracted the COVID-19 virus and this would change her surgery schedule.

The claimant returned to work on February 21, 2023. The claimant was advised that the employer intended to discharge her and she was placed on paid administrative leave while the employer went through their discharge process. The claimant was advised she could resign instead of going through the process, but the claimant declined to resign. During the leave period, the claimant left her area of residence for further medical care, and she was not paid during the time she was away. The claimant returned to the area and was paid while on leave through March 16, 2023. At that point, she was advised that the employer's process was completed and she was discharged for excessive absences, failure to communicate her absences, job abandonment and improper use of leave.

Documents in the record show the employer advised the Division that the claimant was discharged after a prolonged period of dissatisfaction with the claimant's attendance and other performance issues. The employer held that the claimant's absences caused a strain and prevented work from being accomplished. The employer held that the claimant violated their policies by failing to get approval according to policy before taking leave.

The claimant denied that she failed to communicate her leave or abandoned her job. She had previously used her personal email, text and other methods to communicate with the employer and her supervisor used alternate methods to communicate with the claimant. The claimant held that the employer knew she was unable to access her email while she was away, which had a previously been a problem, and they had other methods to contact her to let her know that her leave request had been denied.

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 was discharged for taking leave without approval, against the employer's leave policy. The claimant requested leave and held that she was unaware that her leave after January 31, 2023 was not approved because the employer only advised her of the disapproval via her work email, which she could not access.

The Tribunal does not dispute an employer's right to discharge a worker who fails to meet its standards. However, not all performance failures constitute misconduct.

The meaning of the term misconduct is limited to conduct evincing such willful disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed "misconduct" within the meaning of the statute. Boynton Cab Co. v. Neubeck, 237 Wis. 249, 296 N.W. 636 (1041) from Lynch, Com. Rev. No. 82H-UI-051, March 31, 1982.

The claimant provided credible testimony that she followed the process to request leave and she assumed her leave was approved because the employer did not tell her it was not, even after she told her supervisor she could not access her work email.

In Douglas, Com. Dec. 85H-UI-069, April 26, 1985, paraphrasing AS 44.62.460(d), the commissioner held in part:

“Hearsay evidence may be used to supplement or explain direct evidence but is, by itself, insufficient to support a finding unless that evidence would be admissible over objection in a civil action”.

The employer did not participate in the hearing, choosing to stand on the hearsay documents in the record. The Tribunal does not find that the evidence provided establishes that the claimant’s actions showed a willful disregard of the employer’s interests and therefore do not rise to the level of misconduct.

The Tribunal does not question an employer’s right to discharge a claimant that does not meet its standards, but such a discharge is not always for misconduct. The Tribunal finds the claimant in this case was discharged for reasons other than misconduct and thus the penalties of AS 23.20.379 are not appropriate.

DECISION

The determination issued on July 27, 2023 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending March 25, 2023 through April 29, 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 October 31, 2023.



Rhonda Bunes, Appeals Officer