



APPEAL TRIBUNAL DECISION

Docket number: 23 0603 **Hearing date:** November 8, 2023

CLAIMANT:

MELISSA SPIELMAN
[REDACTED]

EMPLOYER:

ALOFT ANCHORAGE MIDTOWN
[REDACTED]

CLAIMANT APPEARANCES:

Melissa Spielman

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed an August 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 January 4, 2023. She last worked on July 30, 2023. At that time, she worked full time as a housekeeper.

The employer was dissatisfied with the claimant's attendance. Documents in the record show the employer advised the Division that as a result of the claimant's frequent absences, other employees had to complete the claimant's duties and this resulted in delayed room cleaning and overtime payment. The claimant missed work largely because of her adult daughter's difficult pregnancy and childbirth, as well as the claimant's own illnesses. The claimant held that she provided the employer with doctor's notes when requested.

On April 1, 2023, the claimant was warned that her attendance must improve because of the stress her absence was placing on other employees. On July 1, 2023, the claimant was given a written warning that if her attendance did not improve she would be discharged. The claimant was advised that she was required to contact the employer two hours before an absence and that she was required to provide a doctor's note for each absence.

On July 28, 2023, the claimant was ill and sent the employer a text message advising that she could not work. The claimant believed she had food poisoning because other people who had consumed the same take-out food were also ill. The claimant did not get a note from her doctor. The claimant did not believe she could get an appointment at a clinic on short notice and she was not sure there was a walk-in clinic or emergency room available. The claimant held that she was not covered by state medical assistance at that time so she could not afford to seek medical care. The claimant returned to work on her next scheduled day, July 30, 2023, and she was advised she was being let go because she had too many absences.

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 she did not comply with the employer's attendance policies. The claimant had been warned that her frequent absences were placing her job in jeopardy and that she was required to provide a doctor's note for each absence. The claimant was absent and did not obtain a doctor's note, which resulted in her discharge.

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."

In Vaara, Com. Dec. 85H-UI-184, September 9, 1985, the Commissioner held:

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.

The employer gave the claimant clear instructions regarding what was expected of her when absent. The claimant acted against those instructions and did not provide a doctor's note following another absence. The claimant's explanation for not obtaining a note is not reasonable in light of the warnings she had received less than a month before. The claimant's failure to obtain a doctor's note as instructed is insubordination which rises to the level of misconduct.

The Tribunal concludes the claimant was discharged for work-related misconduct and the penalties of AS 23.20.379 are appropriate.

DECISION

The determination issued on August 17, 2023 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending August 5, 2023 through September 9, 2023. The three weeks are 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

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for circumstances beyond the party's control. A statement of rights and procedures is enclosed.

Dated and mailed on November 8, 2023.



Rhonda Bunes, Appeals Officer