



APPEAL TRIBUNAL DECISION

Docket number: 23 0656 **Hearing date:** December 1, 2023

CLAIMANT:

CLAYTON PADDOCK
[REDACTED]

EMPLOYER:

CRESTVIEW MANAGEMENT LLC
[REDACTED]

CLAIMANT APPEARANCES:

Clayton Paddock

EMPLOYER APPEARANCES:

Jennifer Solomon

CASE HISTORY

The employer timely appealed a September 8, 2023 determination which allowed the claimant's benefits without penalty 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 17, 2021. He last worked on August 7, 2023. At that time, he worked full-time as chief engineer.

On his last day of work, the claimant was advised by email that he was not to use the employer's shuttle van for personal reasons and the van was to be parked at the employer's premises at night. The claimant recalled being told a few days before his last day that he was not to use the van for personal use and was not to have it at his residence overnight. On his last day, the claimant went to his residence in the shuttle van to get a tool he required for a work project. While at his residence, the claimant began to feel ill and he checked his blood sugar level and found it was high. The claimant is diabetic and when his blood sugar levels are too high, the claimant feels lethargic and unbalanced and his eyesight is poor, so he decided it would be unsafe to drive back to the worksite. The claimant believed he may have sent a message to the employer explaining the situation, but the employer had no record such a message was sent. The claimant does not have the same phone he did then, and could not confirm that he sent a message. The claimant then slept for a long period of time, which was usual when his blood sugar levels were too high.

The next morning, the claimant returned the employer's van to the worksite and went to the doctor. The claimant believed he sent a message to his supervisor that he would not be at work, but the employer's records show the claimant's supervisor contacted the claimant after he did not show up at work. The employer's records show the claimant did not work and did not contact the employer on August 9 and 10, 2023 and the claimant's supervisor contacted him on both days to learn that the claimant could not work. On August 11, 2023, the claimant did not work and the employer's human resources manager contacted the claimant and advised him that he must provide a doctor's note before returning to work.

The claimant worked the first two hours of his shift on August 14, 2023. The human resources manager then asked the claimant for his doctor's note, but he did not have it. The claimant held that he had directed the doctor's office to send a note directly to the employer and he offered to go get the note from the doctor's office. The claimant was directed to meet with the general manager. The general manager advised the claimant that he was being discharged because he kept the employer's shuttle van at his residence overnight on August 7, 2023 after being warned not to do so. The employer's representative held the claimant would have been discharged that day because of the van issue, even if he had provided a note from his doctor covering his 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 for taking the employer's shuttle van home overnight after being warned that his job was in jeopardy and not to take the van to his residence again.

It is the prerogative of the employer to make those work assignments the employer feels best befits the work needed to be done. Shelton, Com. Dec. 86H-UI-310, October 31, 1986. It is the employer's right to establish the methods and quality of work. Stevens, Com. Dec. 84H-UI-324, February 22, 1985. We have also previously held that even a single instance of insubordination may constitute misconduct if serious enough. Cantrell, Com. Dec. No. 9225160, June 30, 1992.

The claimant did take the van to his home, but he intended to return the van before he began feeling ill. The claimant was not sure he contacted the employer about keeping the van overnight and the employer's representative was sure the claimant had not contacted the employer. Even conceding that the claimant was feeling ill, he did not have the right to keep the employer's van at his residence after having been specifically told that it was not permitted. The claimant's failure to contact the employer and arrange for the van's return was insubordination and rises to the level of misconduct as it is described in regulation 8 AAC 85.095(d).

The Tribunal concludes the claimant was discharged for work related misconduct. The penalties of AS 23.20.379 are appropriate in this case.


DECISION

The determination issued on September 8, 2023 is **REVERSED**. Benefits are **DENIED** for the weeks ending August 19, 2023 through September 23, 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 for circumstances beyond the party's control. A statement of rights and procedures is enclosed.

Dated and mailed on December 4, 2023.


Rhonda Bunes, Appeals Officer