



APPEAL TRIBUNAL DECISION
****CORRECTED****

Docket number: 23 0781 **Hearing date:** January 17, 2024

CLAIMANT:

CATHLEEN HEALEY
[REDACTED]
[REDACTED]

EMPLOYER:

YOUTH ADVOCATES OF SITKA
[REDACTED]
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

None

EMPLOYER APPEARANCES:

Lori Ceselski
Heather Meuret

CASE HISTORY

The employer timely appealed a October 12, 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 August 18, 2020. She last worked on September 20, 2023. At that time, she worked full time as a skills trainer.

The employer had recently demoted the claimant to the position of skills trainer from her previous position as a program manager after the employer determined the claimant was not fulfilling the duties of that program. The claimant was set to start her new position on September 1, 2023. The executive director planned a transition the first week of September with specific duties set out for the claimant to complete that week. The claimant did not complete the transition duties that week and did not clean out her office as directed. The claimant did not begin her new duties and continued to meet with clients and perform duties of the program manager. When confronted, the claimant said she had been directed by the executive director to complete the duties.

On Friday, September 8, 2023, the executive director learned at 4:00 pm that the claimant planned to take leave through September 18, 2023. The claimant had not requested leave or entered approved leave into the employer's timekeeping

system as required by the employer's leave policy. When questioned, the claimant said that her new supervisor had approved her leave in advance. The executive director brought in the claimant's new supervisor, who denied the claimant had requested to take leave.

The employer considered that the claimant had been counseled for taking unapproved leave in the recent past and the claimant had been warned that she was required to request leave and, once approved, enter the leave into the timekeeping system. Because the claimant had violated the leave policy after warning and had been dishonest about whether her leave was approved, the employer decided to discharge the claimant. The claimant returned to work after her leave on September 19, 2023. On September 20, 2023, the claimant was advised in person that she was discharged and she was given a letter outlining the issues that led to the employer's decision.

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 after she took unapproved leave in violation of the employer's leave policy. The claimant had been counseled about taking leave without advance approval.

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. On the other hand, if just cause can be shown for refusing the request, then misconduct may be converted to a nondisqualifying separation.

The claimant had been warned to follow the employer's policy regarding requesting leave. It has not been established that the claimant had any reason for not following the employer's policy and getting her leave approved in advance. The Tribunal finds the employer has established that the claimant's actions which led to her discharge rose to the level of misconduct.

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

DECISION

The determination issued on October 12, 2023 is **REVERSED**. Benefits are **DENIED** for the weeks ending September 23, 2023 through October 28, 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 January 22, 2024.



Rhonda Bunes, Appeals Officer