



APPEAL TRIBUNAL DECISION

Docket number: 24 0044 **Hearing date:** March 18, 2024

CLAIMANT:

JASMINE RICHARDSON
[REDACTED]
[REDACTED]

EMPLOYER:

UTOPIA LLC
[REDACTED]
[REDACTED]

CLAIMANT APPEARANCES:

Jasmine Richardson

EMPLOYER APPEARANCES:

Nicole Rosevear

CASE HISTORY

The claimant timely appealed a January 5, 2024 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 October 30, 2023. She last worked on December 11, 2023. At that time, she worked part time as a direct support provider for persons with special needs.

The employer was not happy with the claimant's attendance during her short period of employment. The claimant was counseled that she was required to notice the employer directly when she was going to be absent and not just notify her clients and she was to follow the procedures of the group homes in which her clients lived. The claimant was not warned that her job was in jeopardy due to her absences.

On December 12, 2024, the claimant's supervisor contacted the claimant before her shift and asked the claimant to come into the office to discuss her attendance. The employer had received complaints that the claimant's clients were not able to participate in their usual services due to the claimant's frequent absences. The claimant advised the employer she would not be able to work that day because it had snowed and she could not get her car out of her driveway and it would not be cleared until later that day.

The employer had intended to give the claimant a final warning that day regarding her absences. The employer considered that schools and government offices were not closed that day because of the snowfall so the employer believed the snowfall was not severe as to justify the claimant missing work. The employer advised the claimant on December 12, 2023 that she was discharged for her absence that day.

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 due to her absence on December 12, 2023. Work attendance is a commonly understood element of the employment relationship. In Tolle, Com. Dec. 9225438, June 18, 1992 the Commission of Labor states, in part:

Unexcused absence or tardiness is considered misconduct in connection with the work unless there is a compelling reason for the absence or tardiness and the worker makes a reasonable attempt to notify the employer.

The claimant in this case held that she had a compelling reason to be absent on December 12, 2024 because it had snowed and her driveway was not cleared and she could not get her car out of her driveway in time for her to go to work. The claimant let the employer know that she would not be at work that day. The claimant had not been warned that her absences were placing her job in jeopardy. The Tribunal does not find that the claimant's absence on December 12, 2024 due to her inability to get out of her driveway rises to the level of misconduct in the absence of a warning that her job was in jeopardy.

The Tribunal does not dispute 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 the penalties of AS 23.20.379 are not appropriate.


DECISION

The determination issued on January 5, 2024 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending December 16, 2024 through January 20, 2024, 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 March 22, 2024.


Rhonda Bunes, Appeals Officer