



APPEAL TRIBUNAL DECISION

Docket number: 24 0201 **Hearing date:** April 2, 2024

CLAIMANT:

STEPHANIE CHRISTENSON
[REDACTED]

EMPLOYER:

QUEST DIAGNOSTICS INC
[REDACTED]

CLAIMANT APPEARANCES:

Stephanie Christenson

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed an October 25, 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.

A hearing was set in this matter for January 18, 2024, which was dismissed by default when the claimant did not appear. The claimant's request to reopen the hearing was granted in a Tribunal decision issued March 8, 2024 under docket number 23 0779.

FINDINGS OF FACT

The claimant began work for the employer on February 6, 2023. She last worked on September 18, 2023. At that time, she worked full time as a phlebotomist.

The employer was unhappy with the claimant's frequent late arrival for work. The claimant held that she was frequently late for her scheduled start time at 7:30 am because she had to take her four-year old child to a childcare facility. The child was unhappy to be left and the claimant felt bad about leaving her child and lingered, resulting in her late arrival at work. The claimant tried to arrange with her child's father to take the child to childcare, but sometimes he did not show up as arranged. The claimant believed that occurred on the last day she was late for work, September 13, 2023.

The claimant recalled receiving a written arning on June 7, 2023 for her attendance. The written warning advised the claimant that unless she had immediate and sustained improvement in being on time for work, she would be subject to discipline up to and including termination of employment. The claimant was aware that the employer's discipline policy calls for a discussion, a written warning, a final written warning and then discharge. The employer's policy also states that the employer is not required to follow each step in the process. Documents in the record show the employer gave the claimant a final warning for her attendance after she was late six times and absent three times after her first written warning. The claimant denied that she received a final written warning. She held that if she had received a final warning and knew that her job was in jeopardy due to being late, she would have done "everything in her power" to be on time for work on September 13, 2023, such as getting up earlier or calling her mother for assistance.

On September 18, 2023, the claimant was advised by her supervisor that she was discharged for being late after warning.

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 being late for work. Work attendance is a commonly understood element of the employment relationship and employers have the right to depend on an employee being on time for work in order to facilitate the employer's business.

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.

In situations where a worker has been warned that further absence or tardiness could result in dismissal, it is necessary to examine the reason for the specific absence and the worker's ability to control it.

The claimant in this case was given a written warning for being frequently late to work. The claimant denied that was aware her job was in jeopardy for being late, however the first written notice advised the claimant that she would be disciplined, up to and including discharge, if she did not improve immediately and sustain that improvement. The claimant held that if she had received a final warning she would have taken additional steps to ensure she was on time for work. The Tribunal finds that if the claimant had the ability to be on time for work by taking steps such as getting up earlier or asking her mother for help, she could have pursued those steps and been on time for work after her first written warning.

Considering Tolle and the claimant's circumstances, the Tribunal concludes the claimant did not have a compelling reason to be late on her last day and her actions were a willful disregard of the employer's interest. The claimant was discharged for misconduct and the penalties of AS 23.20.379 are appropriate.

DECISION

The determination issued on October 25, 2023 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending September 23, 2023 through October 28, 2023. The three weeks remain 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

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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 April 3, 2024.

A solid black rectangular box used to redact the signature of Rhonda Buness.

Rhonda Buness, Appeals Officer