



APPEAL TRIBUNAL DECISION

Docket number: 24 0320 **Hearing date:** May 24, 2024

CLAIMANT:

JONATHAN WOODWORTH
[REDACTED]

EMPLOYER:

VIKING LUMBER COMPANY INC
[REDACTED]

CLAIMANT APPEARANCES:

Jonathan Woodworth

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a March 19, 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 4, 2021. He last worked on February 23, 2024. At that time, he worked full-time as a trim saw operator and millwright.

The claimant was absent from work on February 26, 27 and 28, 2024 because heavy snows made the road to work difficult to navigate. The claimant lives 40 miles from the worksite. The claimant recalled that he tried to get to work each day, but his fiancé did not feel comfortable continuing when the front of the front-wheel drive car and turned around. The claimant lost his driver's license and therefore relies on his fiancé to drive him to work. The claimant let the employer know he could not get to work each day by sending a message to his immediate supervisor on a social media application as previously arranged with the employer, as the claimant did not have cell phone service at his residence, but could access the internet.

The claimant had been counseled that the employer was dissatisfied with the claimant's attendance. Documents in the record show the employer told the Division the claimant was absent 26 times between November 2023 and the date he was discharged. The claimant held that he had missed work since his child was

born because of frequent illness at the childcare facility and illnesses of the claimant and the child. The claimant and his fiancé took turns staying home from work with the child when the child could not go to the childcare facility. The claimant recalled being counseled about his absences, but recalled that he was told the employer understood his absences were due to the baby and the claimant was not advised that his job was in jeopardy.

When the claimant arrived at work on February 29, 2024, he was informed he was discharged for his absences. The employer considered the claimant's previous absences and the fact that another worker who lives in the same area as the claimant made it to work all three days. The claimant held that the other worker likely had a 4-wheel drive vehicle. The claimant held that he did not consider asking the worker for a ride to work because the new worker had just been hired and the claimant was not aware the worker had started work.

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 absent. The claimant held that he was unable to get to work for three days because of the weather, the lack of a

4-wheel drive vehicle and his driver's unwillingness to continue when the driving felt unsafe. The claimant notified the employer of his absences.

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 provided sworn testimony establishing that he was unable to get to work because of road conditions and his vehicle. The claimant did not know another worker from the same area was making the trip each day. The claimant notified the employer in the agreed-upon manner. The Tribunal finds the claimant's reason for his final absences was compelling. The claimant has established that his absences were not a willful disregard of the employer's interest and therefore not misconduct.

The Tribunal does not dispute an employer's right to discharge a worker that does not meet its standards, but not all such discharges are for misconduct. The claimant in this case was discharged for reasons other than misconduct. The penalties of AS 20.23.379 are not appropriate.

DECISION

The determination issued on March 19, 2024 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending March 2, 2024 through April 6, 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 May 29, 2024.



Rhonda Bunes, Appeals Officer