



APPEAL TRIBUNAL DECISION

Docket number: 24 0431 **Hearing date:** July 17, 2024

CLAIMANT:

CHRISTOPHER SEWRIGHT
[REDACTED]

EMPLOYER:

NORTHERN POWERLINE CONSTRUCTORS INC
[REDACTED]

CLAIMANT APPEARANCES:

Christopher Sewright

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a May 8, 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 November 19, 2020. He last worked on March 14, 2024. At that time, he worked full-time as a heavy duty mechanic.

The claimant requested to leave work early on Thursday, March 14, 2024 because his child did not have after-school therapy due to spring break closures. The claimant worked Monday through Thursday, ten hours per day. The claimant flew out to his remote cabin for the weekend with his father and his son. On Sunday, the claimant noted heavy snow and decreased visibility in the area. The claimant consulted throughout the day with the pilot scheduled to pick him up and eventually it was decided the pilot could not safely pick up the claimant and his family that day. The claimant sent a text message to his supervisor via a satellite communication system, letting him know that the claimant would not be at work Monday morning. The claimant's supervisor acknowledged the message.

On Monday, March 18, 2024, the claimant returned to his residence at about noon. He sent his supervisor a text message and asked if he was needed at work that afternoon. He did not receive a reply, so he did not go in to work. When the claimant was getting ready for work on March 19, 2024, he received a text

message from his supervisor letting him know that he was being let go and he could pick up his last paycheck on Friday.

The claimant recalled that he had been counseled once because he was late for work. The claimant was required to drop off his son at the child's mother's home on Monday mornings and he was sometimes late on Mondays due to waiting for her to come to the door to accept the child. The claimant held that he had received no other warnings that his job was in jeopardy to his attendance or his job performance.

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 being absent from work on Monday due to being unable to fly home from a remote cabin the previous day.

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 missed work because a pilot decided he could not safely fly the claimant and his family home. The claimant let the employer know in advance that he would not be at work and when he did get home, he contacted the employer to see if he should come in to work. The Tribunal finds that the claimant had a compelling reason to miss work and he took steps to notify the employer of his absence. It has not been established that the claimant's actions rose to the level of misconduct as it is described in regulation 8AAC 85.095(d).

The Tribunal concludes the claimant was discharged for reasons other than misconduct connected to the work. The penalties of AS 23.20.379 are not appropriate in this case.

DECISION

The determination issued on May 8, 2024 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending March 23, 2024 through April 27, 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 July 18, 2024.

[REDACTED]

Rhonda Bunes, Appeals Officer