



APPEAL TRIBUNAL DECISION

Docket number: 24 0824 **Hearing date:** January 3, 2025

CLAIMANT:

JED WEBSTER
[REDACTED]

EMPLOYER:

SAMSON MARINE FREIGHTWAYS INC
[REDACTED]

CLAIMANT APPEARANCES:

Jed Webster

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a November 7, 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 in May 2022. He last worked on August 13, 2024. At that time, he worked full-time as a deckhand.

The claimant stopped working after August 13, 2024 due to a medical condition. The claimant notified the employer he was required by his doctor to be off work. The claimant was released to return to work on October 16, 2024. The claimant advised the employer of his release to return to work. The boat captain told the claimant the boat was not working so there would be no freight run the following week. The claimant was requested to help work on the boat at the dock beginning Wednesday, October 30, 2024 through the end of that week to prepare for the next week's freight run. The claimant told the captain he could not work those dates because he has custody of his child Thursday through Saturday each week.

The claimant is usually scheduled to work the employer's freight runs Sunday through Wednesday each week, with Wednesdays being short days with optional dock work available. The claimant told the captain that he was not available to assist with the boat repairs, but he would be ready to work the next freight run on November 3, 2024.

On October 25, 2024, the claimant spoke with the port captain, who offered the claimant work at the dock Monday, October 28 through Wednesday, October 30, 2024. The claimant told the port captain that he could not work those days because he had to perform some repairs on his car and his shop had been in use by a family member, so he had been unable to fix his own car earlier. The claimant held that he needed to get the car fixed to get to work and to transport his child. The port captain advised the claimant he was leaving the employer with no choice. The claimant contacted the employer on October 26, 2024 because he was not certain he had been fired, and the port captain confirmed that the claimant had been discharged.

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 because he refused to return to work after he was released to return to work by his doctor.

The duty to be at work on time and to stay at work is implicit in the contract of hire. This duty is not, however, absolute. It is qualified by the terms of the working agreement, customs and past practices in the occupation and the

particular employment, the reason for the absence or tardiness, and the worker's attempts to protect the employment. In all cases, the injury to the employer may be assumed.

A. Compelling reason

Absence or tardiness without permission is misconduct in connection with the work unless the worker had a compelling reason for the absence or tardiness, and took reasonable steps to protect the job. The compelling reason for absence must continue throughout the period of the absence.

The claimant was usually scheduled to work Sunday through Wednesday. The employer accommodated the claimant's child custody schedule and requested that he work Monday through Wednesday. The claimant refused to work those days because he needed to work on his car in order to have transportation to get to work. The claimant's need to work on his car and the earlier unavailability of his shop are circumstances within the claimant's control. It is a worker's responsibility to have reliable transportation to get to work and the claimant's need to work on his car is not a compelling reason to refuse work during his regular work days. The Tribunal finds the claimant was discharged for misconduct connected to the work. The penalties of AS 23.20.379 are appropriate.

DECISION

The determination issued on November 7, 2024 is **AFFIRMED**. Benefits remain **DENIED** for the weeks ending October 26, 2024 through November 30, 2024. 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 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 8, 2025.



Rhonda Buness, Appeals Officer