



## APPEAL TRIBUNAL DECISION

**Docket number:** 25 0003 **Hearing date:** February 4, 2025

### CLAIMANT:

GABRIEL PFEIFFER  
[REDACTED]

### EMPLOYER:

MOTORCYCLE TIMES INC  
[REDACTED]

### CLAIMANT APPEARANCES:

Gabriel Pfeiffer

### EMPLOYER APPEARANCES:

Aaron Fisher  
Si Zimmerman

## CASE HISTORY

The employer timely appealed a December 4, 2024 determination which allowed the claimant's benefits with no penalty 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 September 1, 2022. He last worked on November 6, 2024. At that time, he worked full time as a sales and finance manager.

The employer was dissatisfied with the claimant's job performance. The claimant was given a written warning in June 2023 for failing to update inventory and tracking systems, lienholder satisfaction and funding obtained, deals finalized in a timely manner and maintaining online inventory. The claimant was advised the employer required immediate improvement and that lack of improvement in 30 days would result in further investigation. The claimant held that he improved the areas he was counseled about.

In May 2024, a new general manager was hired. The general manager recalled that he started giving the claimant verbal warnings about job duties that were not being performed to the employer's satisfaction in July 2024. The general manager did not tell the claimant that his employment was at risk, but he believed the claimant should know that his job was in jeopardy because the general manager was reminding him to complete his tasks. At the end of October 2024, the general

manager did a routine review of the past month. He noted that the claimant had not responded to customer inquiries, had not updated a tracker, and had not gotten deals funded. The employer sent an email to the claimant on November 1, 2024, listing five tasks that were not completed. The claimant responded that two of the tasks on the list had been completed and that he typically updated the final monthly report numbers on the first day of the following month. The claimant advised the general manager that he had a simple fix for the issue and that he would get the reports updated that day. The claimant had recently created a checklist he had just started using to be sure he completed his tasks. The claimant planned to show the general manager the checklist and discuss it.

The employer decided the claimant's performance was not going to improve after he had been warned in June 2023 and had many verbal reminders to complete tasks. The general manager waited for the operations manager to be in town on November 6, 2024 and advised the claimant first thing in the morning that he was discharged for failing to perform his job duties to the employer's satisfaction.

### **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 failing to complete his duties to the employer's satisfaction. The claimant denied that he was advised at any point that his continued employment was in jeopardy because he was not completing his job duties to the employer's expectations.

In Nelson, Com. Dec. 02 1239, August 28, 2002, the Commissioner of the Department of Labor and Workforce Development held:

*In Berlin, Com. Dec. 95 3110, May 31, 1996, it was held that an employee fired for violating an employer's policies was not fired for misconduct where the employer sent mixed messages by sometimes condoning similar behavior. While the employer may have had good cause to discharge the claimant in the instant matter, we hold that her conduct does not rise to the level of misconduct connected with the work. The Tribunal properly applied the law to the facts. The Department therefore adopts the Tribunal's findings, conclusion, and decision.*

Warning is not required to find a claimant's actions rise to the level of misconduct in cases where the behavior is so egregious as to show a disregard for the employer's interests. However, the employer's failure to follow up after the written warning in June 2023 left the claimant to believe that his performance was acceptable. In applying the above decisions of the Commissioner to the facts in this case, the Tribunal finds that the employer has not established that the claimant's actions rose to the level of misconduct.

*The meaning of the term misconduct is limited to conduct evincing such willful disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed "misconduct" within the meaning of the statute. Boynton Cab Co. v. Neubeck, 237 Wis. 249, 296 N.W. 636 (1041) from Lynch, Com. Rev. No. 82H-UI-051, March 31, 1982.*

The Tribunal does not dispute the right of an employer to discharge an employee that does not meet their standards, however not all such discharges rise to the level of misconduct. The claimant in this case was discharged for reasons other than misconduct and the penalties of AS 23.20.379 are not appropriate in this case.

### **DECISION**

The determination issued on December 4, 2024 is **AFFIRMED**. Benefits remain **ALLOWED** for the weeks ending November 9, 2024 through December 14, 2024, if otherwise eligible. The three weeks are not reduced from 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 February 5, 2025.

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Rhonda Buness, Appeals Officer