



APPEAL TRIBUNAL DECISION

Docket number: 25 0116 **Hearing date:** March 10, 2025

CLAIMANT:

SHAQUILLE EASON
[REDACTED]

EMPLOYER:

NANIQ GLOBAL LOGISTICS LLC
[REDACTED]

CLAIMANT APPEARANCES:

Shaquille Eason

EMPLOYER APPEARANCES:

Laura Desmond

CASE HISTORY

The claimant timely appealed a February 4, 2025 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 August 8, 2023. He last worked on January 9, 2025. At that time, he worked full time as a driver and warehouseman.

The claimant was hired to work as a courier. After a business consolidation, the employer decided to eliminate the courier position and change to a combined truck driver and warehouseman position. The truck driver portion of the position required a medical clearance card by US Department of Transportation regulations. The claimant was offered a driver/warehouseman position in November 2024. The claimant reminded the employer that he had told his interviewer on hire that he had a history of seizures, although he had been free from seizures for a year at that point.

The claimant was moved to warehouse work only starting November 12, 2024. The claimant was advised by the employer's director of warehousing that he was not required to get the medical clearance unless he wanted to return to a driving position. The claimant believed he would have to see a neurologist to obtain a medical clearance card. The claimant did not particularly want to re-visit testing he previously underwent when he was evaluated by a neurologist.

The director of warehousing approached the claimant in December 2024 and asked how he was doing. The director asked if the claimant had obtained the medical clearance card yet. The claimant said he had not pursued the matter further and he again asked if he was required to get the medical clearance. The director assured the claimant he was not required to unless he wanted to return to driving. The claimant checked at that point and learned that his previous neurologist had retired, and he was facing a 4-6 month wait for a new patient appointment with a neurologist. The claimant did not make an appointment since he was advised he did not have to.

The employer's representative in the hearing held that the claimant was given three months to obtain his medical clearance card for the combined position of truck driver and warehouseman. The employer did not intend to retain employees who could not meet the USDOT requirement of the driving position. The representative held that the claimant was advised of the requirement verbally several times. The claimant denied ever being told that getting the medical clearance card was a requirement for his continued employment and held that he was told the opposite. The claimant held that if he had known he would be discharged, he would have started the process immediately.

After his shift on January 9, 2025, the claimant's direct supervisor told him he was being let go because he did not obtain a medical clearance card.

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 was discharged because he did not obtain medical clearance required of a truck driver by the employer's deadline. The claimant held that he was not told his continued employment was dependent on obtaining medical clearance.

Misconduct cannot be established on the basis of unproven allegations. Cole, Com. Dec. 85HUI006, January 22, 1985.

When a worker has been discharged, the burden of persuasion rests upon the employer to establish that the worker was discharged for misconduct in connection with the work. In order to bear out that burden, it is necessary that the employer bring forth evidence of a sufficient quantity and quality to establish that misconduct was involved. Rednal, Com. Dec. 86H-UI-213, August 25, 1986.

The decision in this matter turns on the weight of the evidence. In Weaver, Com. Dec. 96 2687, February 13, 1997. The commissioner has held in part:

Uncorroborated hearsay evidence must normally be given less weight than that of the sworn testimony of eyewitnesses to an event. Only if first-hand testimony is clearly not credible, should hearsay statements be considered more reliable.

In Douglas, Com. Dec. 85H-UI-069, April 26, 1985, paraphrasing AS 44.62.460(d), the commissioner held in part:

"Hearsay evidence may be used to supplement or explain direct evidence but is, by itself, insufficient to support a finding unless that evidence would be admissible over objection in a civil action".

The employer's testimony is based upon information received from other parties. The claimant provided credible sworn testimony that he was assured he could keep working without obtaining the medical clearance. The employer's hearsay evidence does not establish that the claimant's actions in choosing not to pursue the medical clearance rose to the level of misconduct as described in Regulation 8 AAC 85.095(d), above.

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 question an employer's right to discharge a claimant that does not meet its standards, but such a discharge is not always for misconduct. The Tribunal finds the claimant in this case was discharged for reasons other than misconduct and thus the penalties of AS 23.20.379 are not appropriate.

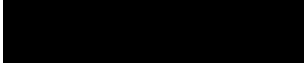
DECISION

The determination issued on February 4, 2025 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending January 18, 2025 through February 22, 2025, 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 March 12, 2025.


Rhonda Buness, Appeals Officer