



APPEAL TRIBUNAL DECISION

Docket number: 25 0218 **Hearing date:** May 27, 2025

CLAIMANT:

DOUGLAS LANE
[REDACTED]

EMPLOYER:

SHAPUR INVESTMENTS LLC
[REDACTED]

CLAIMANT APPEARANCES:

Douglas Lane

EMPLOYER APPEARANCES:

Lisa White
Marcia Cook
Curtis Young

CASE HISTORY

The claimant timely appealed a March 14, 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 his most recent period of work for the employer on November 20, 2024. He last worked on December 21, 2024. At that time, he worked full time as a maintenance technician.

On December 23, 2024, the general manager was notified by a housekeeper that a disused room appeared to have been occupied. Use of rooms by non-guests had been a problem and the general manager was looking into the matter. The general manager checked the electronic lock on the room and found the last key used aside from the housekeeper that was assigned to check the room was maintenance key #2, which was assigned to the claimant. The claimant held that he had turned that key in to the front desk when his coworker left employment a few weeks before, and he used maintenance key #1 for the last few weeks of his employment. The general manager had found that the same key was used in two other instances where someone stayed in a room where no one was authorized to stay. The general manager had not talked to the claimant about those instances because she was still looking into the matter.

The general manager called the claimant on December 24, 2024 about the disused room being occupied. The claimant recalled suggesting that the general manager print the lock reports from the room door and review security camera footage.

The general manager had talked to the claimant previously about a security camera being turned away from the entrance to the maintenance office. The claimant held that the camera may have been bumped when moving something. The claimant held in the hearing that moving one camera would not hide any actions because there were cameras through the worksite. The general manager suspected that tools had gone missing, televisions sets were missing and a shop vac was missing. The general manager did not ask the claimant about the missing items. In the hearing, the claimant explained where the shop vac was in the facility, and denied knowledge of any of the other items the general manager held were missing. The general manager suspected the claimant was responsible for items being missing because she believed he had moved the camera outside his office on purpose. In addition, the general manager was aware that the claimant had a criminal history. The general manager believed the claimant was cooperating with other employees in acting against the employer's interests. The general manager decided to discharge the claimant and two other employees.

On December 26, 2025, when the claimant arrived at work, he was advised by the assistant manager that he had been discharged. The assistant manager asked for the claimant's keys and the claimant checked the box where they were kept and no keys were there. The claimant recalled that because no keys were located, he was unable to retrieve his personal items from the locked maintenance office that day. The assistant manager recalled that the claimant said he had to get the keys from somewhere else to turn them in, but the assistant manager could not recall where. The assistant manager believed the claimant's key was being shared.

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 the employer believed he let a non-guest stay in a disused room. The claimant denied that he took any such action and held that he was not using the card that opened the door during his last few weeks of employment.

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 general manager based her decision to discharge the claimant on the fact that the key assigned to him was the last key used to open the door to the room that was occupied by a non-guest. The claimant provided credible sworn testimony that he was no longer using that key and had turned it in to the

front desk weeks before. The claimant likewise had a reasonable explanation for the camera previously being moved, and pointed out that moving one camera would not stop the employer from observing the claimant in other areas of the worksite including the parking lot. The general manager did not present evidence that showed the claimant took actions that were against the employer's interests. The employer did not establish that the claimant's actions rose to the level of misconduct as described in Regulation 8 AAC 85.095(d), above.

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. Considering Cole, above, the Tribunal must conclude the claimant in this case was discharged for reasons other than misconduct and the penalties of AS 23.20.379 are not appropriate.

DECISION

The determination issued on March 14, 2025 is **REVERSED**. Benefits are **ALLOWED** for the weeks ending December 28, 2024 through February 1, 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 May 27, 2025.

A solid black rectangular box used to redact the signature of the Appeals Officer.

Rhonda Buness, Appeals Officer