ALASKA DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
DIVISION OF EMPLOYMENT AND TRAINING SERVICES
P.O. BOX 241767
ANCHORAGE, ALASKA 99524

APPEAL TRIBUNAL DECISION

Docket number: 25 0410 **Hearing date:** July 1, 2025

CLAIMANT:

HEATHER SPEZIALE
[redacted]

EMPLOYER:

A1 INDUSTRIAL MACHINE & WELDING
[redacted]

CLAIMANT APPEARANCES:

Heather Speziale

EMPLOYER APPEARANCES:

None

CASE HISTORY

The claimant timely appealed a May 22, 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 at the end of March 2025. She last worked on May 2, 2025. At that time, she worked part-time as a bookkeeper and secretary.

On her last day of work, the owner asked the claimant to go pick up a part for the shop at about 10:00 am. The claimant agreed to run the errand, but told the owner she needed to cash her paycheck and put gas in her car in order to run the errand. The claimant normally passed out the paychecks to the staff at noon. The owner agreed and watched the claimant take her paycheck from her desk drawer. The claimant estimated it took her 15-20 minutes to cash her paycheck, get gas, pick up the part and return to the office.

When the claimant arrived at work on Monday, May 5, 2025, the owner told the claimant that her services were no longer required and did not tell the claimant why she was being discharged. The claimant held that she had not been counseled about her performance or warned that her job was in jeopardy.

Documents in the record show the employer reported to the Division that on the claimant's last day of work, she was gone for an hour to do an errand that should

have taken 15 minutes. The employer reported they discovered the claimant had cashed her paycheck while she was gone and when the claimant was asked why she had taken so long, the claimant told the employer she had been petting a dog at the store. The employer reported to the Division that the claimant was discharged because she was untruthful about doing her personal business during work hours. In the hearing, the claimant denied being gone an hour to run the errand and denied that she'd had any conversation with the employer about petting a dog while she was running the errand.

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 the employer held that the claimant did personal errands on work time without permission and was untruthful about it. The claimant held that the employer was aware she needed to cash her check to get gas to complete his errand and she held that she completed the errands and returned to the worksite in 20 minutes or less.

> *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 did not appear at the hearing to offer testimony, so is therefore standing on the hearsay documents in the record. The claimant provided credible sworn testimony that she told the employer she was going to cash her paycheck while running the errand, and that she returned from the errand within 20 minutes. The employer's hearsay evidence does not establish that the claimant's actions 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 May 22, 2025 is **REVERSED.** Benefits are **ALLOWED** for the weeks ending May 10, 2025 through June 14, 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 July 1, 2025.

[redacted]
Rhonda Buness, Appeals Officer