

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0349

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On January 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision #81152). Claimant filed a timely request for hearing. On February 20, 2014, ALJ Hoyer conducted a hearing, and on February 26, 2014 issued Hearing Decision 14-UI-11251, affirming the Department's decision. On March 3, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) US Bank employed claimant from March 31, 2003 to December 17, 2013. He was working as an affluent operations specialist at the time his employment ended.

(2) The employer expected claimant to follow its code of ethics, which included being truthful and accurate, and following the employer's policies and procedures.

(3) One of claimant's duties was to perform monthly audits to verify that 25 of the employer's local branches had current brochures in their banks. Claimant understood that procedure but did not perform the audits for several months during 2013. On May 30, 2013, claimant's regional manager learned from a local branch representative that claimant had not been conducting the brochure audit at that branch. Claimant told the manager he was conducting "spot checks" among his assigned banks, but several days later, told the employer's national operations manager he had stopped doing the monthly brochure audits, and was only sending emails to the banks when the employer had a new brochure. Transcript at 21, 24.

(4) On June 6, 2013, the employer gave claimant a written warning for being untruthful during the manager's investigation into his failure to conduct the monthly brochure audits. The warning said the employer expected claimant to complete all audits per the employer's procedures, and to "be clear, truthful and accurate at all times and in all communications." Transcript at 22.

(5) One of claimant's duties was to perform ongoing monthly audits of certain bank accounts, categorized as "affluent" accounts. The employer expected claimant to email a regional operations manager if an item was missing or if a correction was needed, and to note on the account spreadsheets that he had notified the manager. Claimant understood that procedure.

(6) In September 2013, claimant's regional manager told him the employer would be conducting an internal audit of all the audit spreadsheets during February and March 2014. Due to the upcoming internal audit, claimant's manager said she expected his audit spreadsheets to be "flawless." Transcript at 29. The regional manager did not tell claimant to falsify his audit spreadsheets.

(7) Claimant was on vacation for three weeks during October 2013. When he returned, he knew there were some missing items and corrections needed in the accounts he was assigned to audit. Claimant did not follow the employer's audit procedure and email his manager about the missing items and corrections that were needed. Although he had not emailed his manager, claimant noted on his account audit spreadsheets that he had emailed his manager about approximately ten missing items from the account audits. On December 13, 2013, claimant's regional manager reviewed claimant's audit spreadsheets and saw claimant had said in the spreadsheets that he had emailed her about missing audit items, when she had never received emails about those items.

(8) On December 17, 2013, the employer discharged claimant because he violated the employer's code of ethics by failing to complete the affluent account audits per the employer's procedures, and failing to be truthful and accurate in his account spreadsheets.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that the employer discharged claimant for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct. OAR 471-030-0038(3)(a) (August 3, 2011) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer expected claimant to perform his assigned audits according to the employer's procedures. The employer also had the right to expect claimant to be honest in completing documentation of his duties. Claimant understood those expectations.

After claimant returned from his October 2013 vacation, he failed to follow the employer's audit procedure requiring him to email his regional manager about items that were missing or needed correction in his assigned affluent accounts. Claimant also documented, untruthfully, on his audit spreadsheets that he had completed the emails to his manager. Claimant testified at hearing that he did not email his manager about the items because it was "pointless" to do so, because his manager did not always investigate the items, and he was pursuing the missing items himself. Transcript at 30, 34. The alleged failure of claimant's manager to address his emails does not justify claimant's failure to follow the employer's objectively reasonable procedure to notify his manager if he found errors or items missing during his account audits. The record does not show that following the employer's procedures

was an onerous process, or that the reason for sending the emails to the manager was to shift responsibility for the missing items to the manager. Claimant testified further that he put inaccurate information on his audit spreadsheets because he wanted them to “look correct” for the upcoming internal audit in February and March 2014. Transcript at 31 to 32. The record does not show that the employer instructed claimant to falsify his spreadsheets, or that it would benefit from falsifications in its spreadsheets during an internal audit. Claimant’s failure to follow the employer’s audit procedures, and his falsification of the spreadsheets for those audits, were willful violations of the employer’s expectations.

Claimant’s conduct cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). To be considered an isolated instance of poor judgment, an act must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). During 2013, claimant failed to follow the employer’s procedures regarding brochure audits, alleging the brochure audits were “pointless” because the banks did not respond to him with accurate information. Transcript at 43. The record does not show claimant had the authority to decide unilaterally to stop doing the brochure audits. Claimant’s failure to follow the employer’s audit procedures was a willful violation of the employer’s expectations. Claimant’s acts after returning from vacation in October 2013 were part of a pattern of willful behavior, and not a single or infrequent occurrence.

Claimant’s conduct cannot be excused as a good faith error under OAR 471-030-0038(3)(b). Claimant did not sincerely believe, or have a factual basis for believing, that the employer would condone his failure to perform assigned duties and falsification of audit spreadsheets.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-11251 is affirmed.

Tony Corcoran and D. E. Larson,
Susan Rossiter, not participating.

DATE of Service: March 20, 2014

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310, or visit the website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

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