

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0386

*Affirmed
No Disqualification*

PROCEDURAL HISTORY: On December 17, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision #144229). Claimant filed a timely request for hearing. On February 19, 2014, ALJ Monroe conducted a hearing, and on February 20, 2014 issued Hearing Decision 14-UI-10734, concluding the employer discharged claimant but not for misconduct. On March 12, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB. We considered the entire hearing record and the employer's written argument.

FINDINGS OF FACT: (1) JP Morgan Chase Bank employed claimant from November 1, 1999 to November 20, 2013. Claimant worked as an assistant bank manager at the time her employment ended.

(2) The employer had a confidential information policy prohibiting employees from disclosing personal information, including personal passwords, to coworkers unless authorized and legally permitted to do so. Claimant understood that policy.

(3) The employer instructed its managers to make customer service a "number one priority." Transcript at 19. Managers had discretion to use their personal good judgment to make exceptions to the employer's policies to ensure good customer service. Claimant understood those expectations.

(4) On April 30, 2013, claimant was assisting a business customer with a banking transaction. Claimant left the bank to take her lunch, believing the transaction had been completed. The senior teller from the bank called claimant during her lunch break and told her another teller was assisting claimant's customer, who had returned because a portion of the transaction was incomplete. Claimant's branch was unable to complete the transaction without having claimant's password. Knowing the details of the transaction, and not wanting to send the customer from the bank without completing her transaction, claimant gave her password to the senior teller so the other teller could complete the transaction.

(5) Claimant's manager had not reported to work on April 30, 2013.

(6) On April 31, 2013, claimant's manager told claimant the customer from April 30, 2013 had complained to the bank about the April 30, 2013 transaction. Claimant told the manager what occurred during the transaction and that she had given the senior teller her password to complete the transaction. The manager counseled claimant that she was expected to use good judgment and follow the employer's code of conduct. The employer did not discipline claimant further for the incident at that time.

(7) In approximately October 2013, claimant's coworker told a new manager for claimant's branch about the April 30, 2013 incident. Per the employer's policy, the manager reported the matter to the employer.

(8) The employer investigated the April 30, 2013 incident, determined claimant had violated the confidential information provision of its code of conduct, and discharged claimant for that violation on November 20, 2013.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude the employer discharged claimant, not 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. In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). Good faith errors are not misconduct. OAR 471-030-0038(3)(b). A "good faith error" usually involves a mistaken but honest belief that one is in compliance with the employer's policy or expectation, and some factual basis for believing that to be the case without reason to further investigate what the expectation was. *Accord Goin v. Employment Department*, 203 Or App 758, 126 P3d 734 (2006).

The employer discharged claimant because she shared her confidential password with the senior teller so he could complete a transaction claimant began before she left the bank. The employer reasonably expected claimant to refrain from providing her password to others, including other employees. Claimant understood the employer's usual policy was that she should not provide her password to anyone else. However, claimant also understood that the employer permitted managers to use their discretion to make exceptions to the employer's policies on occasion if necessary to provide good customer service. Transcript at 18, 34. Claimant chose to give her password to the teller so her bank could complete a transaction claimant had begun, but had not completed, before claimant left the bank for lunch. Claimant was concerned the business customer would be angry with the bank if the customer were unable to complete her transaction, and knew she could change her own password after the transaction was completed. Transcript at 18 to 19. Claimant testified that she did not consider the underlying transaction to be questionable, she had begun the transaction herself, and that she weighed the employer's policies and "felt it was the right thing to do" in the specific situation. Transcript at 24. Claimant's understanding of how to apply the employer's conflicting policies to the specific situation was not patently unreasonable or implausible. *See Goin v. Employment Department*, 203 Or App 758,

126 P3d 734 (2006) (where claimant's mistaken belief that she was not required to provide certain medical information was sincere and "not entirely groundless," her behavior in not complying with the employer's expectations was excusable as a good faith error). The sincerity of claimant's belief that she was making a decision consistent with her understanding of the employer's expectations is reinforced by the fact that claimant openly gave her password to the senior teller, with the knowledge of another teller in the bank. It is similarly reinforced by the employer's failure to discipline claimant for the April 30, 2013 incident when it first learned on April 31, 2013 that claimant had given her password to a coworker.

Although claimant's disclosure of her password to a coworker violated the employer's confidential information policy, claimant did so because she sincerely believed her conduct was permissible under the employer's competing policies and her discretion as a manager. Under OAR 471-030-0038(3)(b), claimant's conduct was, at worst, a good faith error, which is not misconduct. Claimant therefore is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 14-UI-10734 is affirmed.

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

DATE of Service: March 28, 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>.

Note: The above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.