

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0486

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 19, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 132029). The employer filed a timely request for hearing. On March 3, 2014, ALJ Menegat conducted a hearing, and on March 6, 2014 issued Hearing Decision 14-UI-11771, affirming the Department's decision. On March 26, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) JP Morgan Chase Bank employed claimant from March 17, 2008 to December 2, 2013, last as an assistant branch manager.

(2) On September 27, 2013, the employer gave claimant a written warning for "unsatisfactory performance and leadership," sharing personal and private information about other employees to their colleagues, and failing to support, prepare and coach employees. Exhibit 1.

(3) After September 27, 2013, the branch manager asked claimant to shadow the employer's newest teller and assist her and oversee transactions. Because the new teller was slow at assisting customers, claimant sometimes assisted customers herself so that they did not have to wait. Claimant remained close to the new teller. Claimant also had the new teller work next to the lead teller, in case the new teller had any questions while claimant was assisting a customer. The new teller was never left completely unattended. When the branch manager instructed claimant to stop assisting customers and help the new teller, claimant complied.

(4) On October 10, 2013, claimant was the manager on duty at closing time. As such, she was expected to ensure that signature cards were not left out in the scan bin overnight. The next morning, signature cards were discovered left out in the scan bin overnight.

(5) Claimant was expected to ensure that signature cards were error-free before she initialed and scanned them. On October 21, 2013, an error was found on a signature card claimant initialed and scanned.

(6) On October 31, 2013, claimant's supervisor reprimanded her for allegedly failing to greet customers waiting in line in a timely manner. Claimant did not fail to greet customers waiting in line in a timely manner.

(7) The employer expected claimant to empty her teller drawer at the end of her shift. On November 6, 2013, a ten dollar roll of quarters was found in the drawer of the station at which claimant worked until closing the day before.

(8) On November 18, 2013, the branch manager found two errors on signature cards that were initialed and scanned by claimant.

(9) Claimant's commute to work took approximately 20 minutes in light traffic. On November 19, 2013, claimant left for work one hour before she was expected to report for work. Due to heavy traffic, claimant reported for work 15 minutes late.

(10) On November 22, 2013, claimant left for work one hour before she was expected to report for work. Due to heavy traffic caused by an automobile accident, claimant reported for work ten minutes late.

(11) The employer discharged claimant for the incidents occurring after the September 27, 2013 written warning.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant's discharge was 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. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee.

The employer discharged claimant, in part, for violating the branch manager's instruction to shadow the employer's newest teller. However, claimant violated the instruction to prevent customers from having wait, and took steps to ensure that the new teller was not left unattended. At hearing, claimant testified that she believed it was within her discretion as a manager to leave the new teller's side to assist customers. Transcript at 18. The employer failed to show that claimant should have known otherwise through prior training, experience or warnings. Nor do we infer that claimant knew or should have known as a matter of common sense. The employer therefore failed to establish that claimant violated its expectations willfully or with wanton negligence.

The employer also discharged claimant, in part, for failing to ensure that signature cards were error-free before she initialed and scanned them, failing to ensure that signature cards were not left out in the scan bin overnight, and failing to empty her teller drawer at the end of her shift. However, the employer failed to show that claimant consciously failed to do so, or that she consciously engaged in other conduct she knew or should have known would probably result in her failure to do so. Claimant may have been careless, arguably negligent, but her conduct was not willful, and the employer failed to show it rose to the level of wanton negligence as defined under OAR 471-030-0038(1)(c).

The employer also discharged claimant, in part, for allegedly failing to greet customers waiting in line in a timely manner. However, the employer provided only hearsay information to support that allegation. Exhibit 1. Claimant denied the allegation. Transcript at 21. The record contains no basis for concluding that claimant was not a credible witness; consequently, her denial under oath outweighs the employer's hearsay evidence. The employer therefore failed to show that claimant failed to greet customers waiting in line in a timely manner.

The employer also discharged claimant, in part, for failing to report for work on time on November 19 and 22, 2013. However, the record fails to show that claimant knew or should have known that leaving for work one hour before she was expected to start work would probably result in her being late. Absent such a showing, we cannot find that claimant violated the employer's expectations willfully or with wanton negligence.

The employer discharged claimant, not for misconduct. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 14-UI-11771 is affirmed.

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

DATE of Service: April 21, 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.