EO: 300
BYE: 201446

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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DS 005.00

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0488

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 9, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 104930). Claimant filed a timely request for hearing. On January 30 and February 18, 2014, ALJ Vincent conducted a hearing, and on March 7, 2014 issued Hearing Decision 14-UI-12010, concluding the employer discharged claimant, but not for misconduct. On March 27, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the parties' written arguments.

FINDINGS OF FACT: (1) Autozone Inc. employed claimant as a store manager from November 12, 2012 to November 13, 2013.

(2) As a store manager, claimant's duties included conducting sweeps and reconciliations of employee cash registers. Sweeps consisted of removing excess cash from the tills and dropping it in a lockbox inside the store safe. Reconciliations consisted of comparing cash drawer items, including cash, checks, coupons, gift certificates, credit and debit slips, and "PCIs" against "SMS" reports. Exhibit 2. During reconciliations, managers opened the store safe.

(3) The employer expected store managers to secure the employer's funds, and refrain from leaving the store safe open and unattended. The employer had a written policy stating that managers were required to have another employee present when completing sweeps. The employer expected the manager to have the employee watch the manager drop the sweep money drop into the safe's lockbox. The employer also expected the manager to confirm that the sweep money landed at the bottom of the lockbox, and have the employee separately confirm that the sweep money landed at the bottom of the

lockbox. Claimant knew managers were expected to have another employee watch the manager drop the sweep money drop into the lock box. He also knew managers were expected confirm that the sweep money landed at the bottom of the lockbox.

(4) On October 3, 2013, claimant conducted a sweep with another employee present, and the store safe closed. When completing the sweep, claimant had the employee watch him as he opened the safe and dropped the sweep money into the lockbox. Claimant believed he heard the sweep money hitting the back of the lockbox, and therefore believed it had dropped to the bottom of the lockbox. Claimant typically looked into the lockbox chute to confirm the sweep money had dropped to the bottom of the lockbox. On October 3, however, claimant forgot to do so.

(5) Later that day, claimant conducted a reconciliation. During the reconciliation, claimant left the safe open and unattended for approximately one minute while pulling tills from two cash registers.

(6) On October 5, 2013, it was discovered that the money from claimant's October 3 sweep was missing. On November 5, 2013, the employer discharged claimant for failing to properly secure the employer's funds during the October 3 sweep and reconciliation.

CONCLUSIONS AND REASONS: We agree with 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. 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).

In written argument, as at hearing, the employer argued that claimant knew or should have known from its policies and his training and experience that he was expected to confirm the sweep money landed at the bottom of the lockbox inside the store safe, have the other employee confirm that the money landed at the bottom of the lockbox, and not leave the safe open and unattended. However, we find the evidence as to whether claimant knew or should have known from the employer's policies and his training and experience that he was expected to have the other employee confirm the sweep money landed at the bottom of the lockbox, and refrain from leaving the safe open and unattended for only one minute, at best, equally balanced. Nor do we find those expectations so obvious that that claimant knew or should have known as a matter of common sense. The employer therefore failed to establish that claimant violated the employer's expectations willfully or with wanton negligence, and that his conduct was not the result of a good faith error in his understanding of those expectations.

We agree that claimant knew he was expected to confirm that the sweep money landed at the bottom of the lockbox. However, the record shows that claimant forgot to do so, and not that he consciously neglected to do so. Claimant may have been careless, arguably negligent, but he did not willfully violate the employer's expectations, and his conduct did not rise to the level of wanton negligence as defined under OAR 471-030-0038(1)(c).

We therefore agree with the ALJ that claimant's discharge was not for misconduct. Claimant is not disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 14-UI-12010 is affirmed.

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

DATE of Service: <u>April 30, 2014</u>

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.