

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0603

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On February 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 81417). Claimant filed a timely request for hearing. On March 24, 2014, ALJ McGorin conducted a hearing, and on March 25, 2014 issued Hearing Decision 14-UI-13341, concluding the employer discharged claimant for misconduct. On April 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had, the outcome of this decision would remain the same for the reasons explained.

FINDINGS OF FACT: (1) Bestcare Treatment Services, Inc. employed claimant as a mental health clinician from October 1, 2007 to January 28, 2014.

(2) In early January 2014, the employer had disciplined claimant for problems implicating ethics, judgment errors, and the employer's policies and procedures and demoted her. On January 17, 2014, the employer asked claimant to accept reorganization of her duties to remove all clinical duties and replace them with other duties, many of which claimant was already performing. On January 21, 2014, claimant agreed to the reorganization.

(3) Claimant subsequently disagreed with the manner in which the employer wanted her to remove herself from her clinical duties. Claimant had developed long-term relationships with some of her clients and was concerned how her withdrawal from clinical duties might affect them. She was also concerned that the other clinicians who would assume her duties already had full caseloads and would be unable to assume her duties.

(4) On January 24, 2014, claimant notified her supervisor that she was rescinding her acceptance of the reorganization. On January 28, 2014, claimant met with individuals including the employer's executive director. Between January 24 and January 28, she was asked to reconsider her rescission approximately three times, and refused to do so. The executive director told claimant she had two options, to either resign or be discharged. When claimant refused to quit work, the employer then discharged her for refusing to agree to the reorganization.

CONCLUSIONS AND REASONS: 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. 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 for rescinding her agreement to the reorganization of her duties, and refusing to reconsider her rescission. As a matter of common sense, an employer has the right to assign duties to its employees. Claimant's refusal to accept the employer's reorganization of her duties violated that standard of behavior the employer had the right to expect of her.

Claimant argued that she did not refuse the reorganization itself, or the addition of additional duties on top of her clinical duties, her concern was solely the way the employer wanted to implement the removal of her clinical duties, and it was the employer, not her, who refused to work toward a resolution. However, the record shows that claimant testified she could not accept the reorganization, refused to give up her caseload, and, after rescinding her acceptance of the reorganization, she then refused three times to reconsider that decision. Given those circumstances, claimant knew or should have known that repeatedly refusing to accept the employer's decision with respect to allocation of her work and caseload would probably violate the standard of behavior the employer had the right to expect of her. Her conduct was, therefore, wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment or a good faith error under OAR 471-030-0038(3)(b). Conduct is only excusable as an isolated instance if it does not exceed mere poor judgment by, among other things, making a continued employment relationship impossible. OAR 471-030-0038(1)(d)(D). Here, because of claimant's repeated refusal to accept or act in accordance with the employer's allocation of job duties to her, particularly given that the reallocation was based in large part on discipline earlier that month over issues implicating claimant's judgment, ethics and adherence to the employer's policies and procedures, it was impossible for the employer to assign or allocate work it considered appropriate for claimant, thus making a continued employment relationship impossible. Conduct is only excusable as a good faith error if claimant sincerely believed, with some factual basis, that the employer would condone the conduct. Here, the employer repeatedly asked claimant to accept the reorganization of her workload and claimant repeatedly refused to do so, citing no belief or basis for believing that the employer would consider her refusals acceptable.

Accordingly, claimant's wantonly negligent conduct cannot be excused as either an isolated instance of poor judgment or a good faith error.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-13341 is affirmed.

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

DATE of Service: May 7, 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.