

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0700

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 31, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged for misconduct (decision # 124608). Claimant filed a timely request for hearing. On March 6, 2014, ALJ Sime conducted a hearing, and on March 14, 2014, issued Hearing Decision 14-UI-12465, affirming the Department's decision. On March 28, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Providence Health (Providence) employed claimant as a security officer from December 10, 1998 to October 23, 2013.

(2) In 2011, the employer's security department moved to a newly constructed dispatch center where costly new equipment had been installed. The employer notified its security personnel, including claimant, that eating in the new dispatch center was prohibited. Transcript at 11. Claimant was aware of the employer's expectation.

(3) On October 15, 2013, at approximately noon, the employer's manager of security, Stevenson, came into the dispatch center where claimant was working and saw empty soda cans, grocery bags and food crumbs on the floor. Claimant denied responsibility for the items and suggested the manager remind security personnel that eating in the dispatch center was prohibited. That afternoon, Stevenson sent all security officers an email reminder regarding the prohibition. That evening, after receiving Stevenson's email, claimant ordered a pizza that she and two other security officers ate in the dispatch center. When another employee saw claimant eating the pizza, she reminded her about Stevenson's email to which claimant responded, "whatever." Transcript at 7. The employee notified Stevenson of her observations and interaction with claimant.

(4) On October 18, 2013, the same employee observed claimant eating a hard-boiled egg in the dispatch center and notified Stevenson of her observation.

(5) On October 22, 2013, Stevenson confronted claimant about the employee's reports. Claimant did not deny them, admitted she had understood the employer's expectation and had "f-ed up." Transcript at 7-8; Exhibit 1. Stevenson put claimant on administrative leave and contacted the employer's human resources department.

(6) On October 23, 2013, the employer discharged claimant for eating food in the dispatch center on October 15 and 18, 2013.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ. 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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer had the right to expect claimant to refrain from eating in the dispatch center. On October 15 claimant admitted to Stevenson she was aware of the expectation and later received Stevenson's email reminder regarding that expectation. Claimant violated the expectation that evening when she ordered and ate pizza in the dispatch center and on October 18 when she was observed eating a hard-boiled egg in the dispatch center. By responding "whatever" to her coworker's comment about eating in the dispatch center on October 15 and admitting to Stevenson on October 22 that she had "f-ed up" by doing so on October 18, claimant demonstrated that she was consciously indifferent to the employer's expectation on each occasion. Consequently, claimant's conduct on October 15 and 18 was at least wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. An act of poor judgment is isolated only if the exercise of poor judgment is 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). Claimant exercised poor judgment by eating in the dispatch center twice within three days of receiving an explicit reminder of the employer's prohibition against such conduct. Those demonstrations of poor judgment were part of a pattern of wantonly negligent behavior, and not a single or infrequent occurrence. Claimant's conduct cannot be excused as a good faith error in her understanding of the employer's expectation. Claimant acknowledged to Stevenson on October 22 that she had understood the employer's eating prohibition and had "f-ed up."

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

DECISION: Hearing Decision 14-UI-12465 is affirmed.

Susan Rossiter and Tony Corcoran;
D. E. Larson and J. S. Cromwell, *pro tempore*, not participating.

DATE of Service: May 15, 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.