

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0822

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 19, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 163718). Claimant filed a timely request for hearing. On April 30, 2014, ALJ Murdock conducted a hearing, and on May 2, 2014 issued Hearing Decision 14-UI-16694, concluding claimant's discharge was not for misconduct. On May 13, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) First Community Credit Union employed claimant from July 30, 2001 to February 24, 2014.

(2) The employer expected employees to process members' foreign cash advances differently than they processed foreign cash advances for non-members. Members' foreign cash advances were generally supposed to be processed through their accounts, and, if a member had delinquent loans with the employer, the employer sometimes redirected some of the cash advance as loan repayment. However, the employer's foreign cash advance policy did not state that employees were prohibited from processing members' foreign cash advances as non-member advances.

(3) Claimant knew both methods of processing foreign cash advances. However, she did not know that the employer prohibited her from running members' foreign cash advances as non-member advances. She thought she was only required to process transactions through members' accounts if the member was going to deposit a portion of the advance into an account, but not if the member was taking the cash.

(4) In the final incident, a former assistant manager, who was also claimant's former supervisor, asked claimant to process a foreign cash advance for her. The former assistant manager was a member of the employer's credit union. She asked claimant to process her foreign cash advance as a non-member. Claimant had seen other employees process the former assistant manager's cash advances the same way, not access the former assistant manager's account, and did not know or suspect that the former assistant

manager was trying to avoid running the advance through her account because she was severely delinquent on loans and would not receive the full amount of her foreign cash advance if it was processed through her account.

(5) The employer discovered claimant's conduct, and concluded that claimant had deliberately misprocessed the former assistant manager's member cash advance as though she was a non-member to help the former assistant manager avoid losing a portion of the advance to repay her delinquent loans. On February 24, 2014, discharged claimant because of that transaction.

CONCLUSIONS AND REASONS: The employer discharged claimant, but 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 expected claimant to process members' foreign cash advances through the members' accounts, and prohibited them from processing those transactions as though for a non-member. Claimant violated that expectation because of the way she processed the former assistant manager's transaction. However, claimant's violation was not willful or wantonly negligent. She did not know or have reason to know the former assistant manager was delinquent on loans and did not want any portion of her cash advance diverted to cover the delinquent loan payments, as she did not have personal knowledge of the loan statuses, and had not reviewed the former assistant manager's account. Moreover, considering that the employer did not have a written policy that stated employees were prohibited from processing transactions in that manner, that claimant was asked to do so by a former assistant manager, had seen others do the same without repercussion, and thought it was permissible so long as the member was taking the cash away rather than depositing any portion of it, the record likewise fails to show that claimant knew or should have known processing the former assistant manager's transaction as though she was a non-member would probably violate the employer's expectations.

The employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 14-UI-16694 is affirmed.

Susan Rossiter and J. S. Cromwell;
Tony Corcoran, not participating.

DATE of Service: June 20, 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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