

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0831

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 7, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause decision # 112027). Claimant filed a timely request for hearing. On April 16, 2014, ALJ Clink conducted a hearing, and on April 25, 2014 issued Hearing Decision 14-UI-16103, affirming the Department's decision. On May 14, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument.

FINDINGS OF FACT: (1) Quality Business Service employed claimant as a receptionist from December 17, 2012 to November 4, 2013.

(2) On October 3, 2013, claimant requested time off from work for an indefinite period of time. The employer granted claimant's request.

(3) On October 13, 2013, claimant informed the employer that she was willing to return to work. Claimant was told that she could return to work, or take more time off. Claimant elected to take more time off.

(4) On October 21, 2013, claimant again informed the employer that she was willing to return to work if needed. Claimant was told that her supervisor would contact her.

(5) On November 4, 2013, claimant again informed the employer she was willing to return to work. The employer informed claimant that it had replaced her.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that the employer discharged claimant, not for misconduct.

The first issue in this case is the nature of the work separation. OAR 471-030-0038(2)(a) (August 3, 2011) provides that the work separation is a quit if the employee could have continued to work for the same employer for an additional period of time. If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (August 3, 2011). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

In Hearing Decision 14-UI-16103, the ALJ concluded that claimant quit work because she failed to ensure her job still would be available when she was ready to return to work, she was the moving party in severing the employment relationship, and could have continued to work for the employer for an additional period of time.¹ However, the record fails to support the ALJ’s determination that claimant was the moving party in severing the employment relationship, and could have continued the employment relationship for an additional period of time. The record instead shows that claimant was willing to continuing the employment relationship throughout her indefinite leave of absence, and that the employer severed the relationship by informing claimant on November 4, 2013 that it had replaced her. Because the employer did not allow claimant to continue the employment relationship for an additional period of time after November 4, the work separation is a discharge.

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) 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 the present case, the record fails to show that claimant knew or should have known that continuing her indefinite leave of absence with the employer’s apparent permission probably violated the employer’s expectations. Absent such a showing, we cannot find misconduct. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 14-UI-16103 is set aside, as outlined above.

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

DATE of Service: June 23, 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,

¹ Hearing Decision 14-UI-16103 at 2.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.