

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0874

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 29, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision #92707). The employer filed a timely request for hearing. On April 18, 2014, ALJ Monroe conducted a hearing, and on April 28, 2014 issued Hearing Decision 14-UI-16217, affirming the Department's decision. On May 19, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB. We considered the entire hearing record and the employer's written argument when reaching this decision.

FINDINGS OF FACT: (1) JP Morgan Chase Bank employed claimant from February 13, 2013 to January 3, 2014. Claimant was a relationship banker at the time his employment ended.

(2) As a relationship banker, the employer expected claimant to "profile" clients by engaging in certain sales behaviors to build lasting relationships with customers. Transcript at 5 to 6. The employer expected claimant to make follow up calls to clients at intervals of ten days, six weeks, and three months after completing certain bank transactions. The employer expected claimant to use the employer's guide ("transition statement") to ask clients questions during the follow up calls to identify the customers' needs, and to input notes from the calls into the employer's contact history computer software. Transcript at 8.

(3) On December 16, 2013, claimant's branch manager reviewed claimant's follow up calls and discovered that there was no record of a six-week call or contact history notes for one of his clients. The manager also found that claimant had not used the employer's transition statement for all his calls and had not recorded information the employer expected him to learn from the clients during the calls.

(4) The employer's computer software automatically scheduled appointments for follow up calls on claimant's calendar for the ten-day calls, but not for the six-week and three-month calls. Claimant's

regular practice was to schedule the six-week and three-month calls himself on his calendar when he completed the ten-day call. If a call appointment occurred on a day claimant was not working in the bank, he would make the call on a different day. If claimant completed the call on a different day, the computer would show he did not complete the call on the day the call was originally scheduled.

(5) On January 3, 2014, the employer discharged claimant because he failed to conduct a six-week follow up call with a client, record the client's information in the employer's contact history software, and use the employer's transition statement to collect information from clients.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ and conclude 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. Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b) (August 3, 2011). The employer bears the burden to prove misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant, in part, because he did not properly profile a client when he failed to conduct a six-week follow up call with the client failed and to record the client's information in the employer's contact history software. Claimant understood he was supposed to conduct follow up calls after some bank transactions, and testified that the computer software automatically scheduled ten-day calls, but did not schedule six-week or three-month calls. Transcript at 21. Claimant manually scheduled those appointments, and did not recall having missed a follow up call with the client from December 16, 2013. Transcript at 21 to 22. The employer did not show that claimant consciously failed to set the appointment or call the client, or that he consciously engaged in other conduct he knew or should have known would result in his failure to complete that six-week follow up call. Claimant may have been careless, but his conduct was not willful, and the employer failed to show it rose to the level of wanton negligence as defined under OAR 471-030-0038(1)(c).

Claimant testified that he did not understand which client interactions required him to record client notes in the employer's software or to use the employer's transition statement. Transcript at 28 to 29, 32 to 33. Although the employer provided claimant training as a personal banker at hire, the record does not establish that claimant knew or should have known through prior training, experience or warnings when he was required to record client notes, or use the employer's transition statement. Nor do we infer that claimant knew or should have known as a matter of common sense. Claimant testified that he "handled everything the best [he] could," but wished that he had "more expertise" and was "more proficient." Transcript at 31 to 32. The record shows that it was more probable than not that claimant's failure to record notes for the client or to use the transition statement was the result of inefficiency resulting from

lack of job skills or experience. The employer therefore failed to establish that claimant violated its expectations willfully or with wanton negligence.

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

DECISION: Hearing Decision 14-UI-16217 is affirmed.

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

DATE of Service: June 27, 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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