

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0882

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On March 5, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73559). Claimant filed a timely request for hearing. On April 9, 2014, ALJ R. Davis conducted a hearing, and on April 11, 2014 issued Hearing Decision 14-UI-15051, affirming the Department's decision. On April 29, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pony Village Mall employed claimant as its mall manager from September 23, 2013 to February 13, 2014.

(2) On February 1, 2014, one of the employer's security officers decide to ban a male individual from the employer's premises for allegedly harassing three female store employees. On February 3, 2014, claimant modified the security officer's decision, banning the individual from only a portion of the employer's premises.

(3) On February 10, 2014, one of the employer's owners asked claimant why he had modified the security officer's decision. Claimant understood that the employer expected him to be honest when answering the owner's question. Claimant falsely stated that he had spoken to two of the female store employees and the other employee's manager on February 3, and modified the security officer's decision based on their statements.

(4) Claimant had not spoken to the store employees or manager on February 3, 2014. Claimant lied to the owner with the intent of deceiving the owner into believing he had spoken only the store employees and manager before making his decision to modify the security officer's decision to ban the male individual from the employer's premises.

(5) The employer discharged claimant for dishonesty.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant's discharge was 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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b) (August 3, 2011).

The employer had a right to expect claimant to be honest when explaining to the employer's owner why he modified a security officer's decision to ban a male individual from the employer's premises for allegedly harassing three female store employees. Claimant understood that expectation as a matter of common sense. Thus, in falsely stating that he had spoken to two of the female store employees and the other employee's manager on February 3, and modified the security officer's decision based on their statements, claimant consciously engaged in conduct he knew violated the employer's expectations. Claimant therefore willfully violated those expectations.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. Acts that create irreparable breaches of trust in the employment relationship exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d)(D). Absent evidence to the contrary, we infer that claimant lied to the owner with the intent of deceiving the owner. Claimant's willful act of dishonesty, made with the intent to deceive the employer's owner, was sufficient to create an irreparable breach of trust in the employment relationship, and cannot be excused as mere poor judgment.

Claimant's conduct also was not a good faith error. Claimant did not assert or show that he sincerely believed, and had a rational basis for believing, that lying the owner complied with the employer's expectations.

The employer discharged claimant for misconduct. Claimant is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-15051 is affirmed.

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

DATE of Service: June 5, 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.

