

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0886

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On March 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 93309). The employer filed a timely request for hearing. On May 13, 2014, ALJ Shoemake conducted a hearing, and on May 16, 2014 issued Hearing Decision 14-UI-17847, concluding the employer discharged claimant for misconduct. On May 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Walmart employed claimant from April 6, 2007 to February 21, 2014 as an assistant night manager.

(2) The employer's ethics policy prohibited employees from falsifying regulatory documents, including quality control and audit records. The employer required its assistant night managers to conduct a power lifting equipment (PLE) review each night, and to complete the PLE checklist by 6:00 a.m. after the review. The employer prohibited the managers from writing on the PLE checklist unless the review was completed. Claimant understood the employer's expectations.

(3) On January 22, 2014, claimant worked as the assistant night manager, and did not complete the PLE review or the PLE checklist.

(4) Later on January 22, 2014, a compliance officer from the employer's regional office conducted an audit of the site where claimant worked, including the PLE records. The compliance officer saw that the PLE checklist was not completed for January 22, 2014.

(5) On January 23, 2014, while off duty, claimant went into the assistant manager's office and told the assistant manager on duty that she had forgotten to complete the PLE checklist. Claimant removed the PLE book and completed the January 22, 2014 checklist at that time.

(6) On January 24, 2014, claimant's supervisor saw that the PLE checklist for January 22, 2014 had been completed.

(7) On February 21, 2014, the employer discharged claimant for falsifying the PLE document.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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. 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 accurately report the PLE information on the PLE checklist. Claimant understood the employer's expectations. The record shows, and claimant did not dispute, that the PLE checklist was not completed before the January 22, 2014 audit. When claimant's supervisor saw the PLE checklist again on January 24, the January 22 checklist had been completed. Claimant testified that she did not complete the January 22 checklist. Audio Record ~ 28:24 to 28:47. However, claimant did not provide a plausible explanation for how the changes to the document occurred, or why they contain her initials, and appear to be in her handwriting. *See* Exhibit 1; Audio Record ~ 29:17 to 30:00. Moreover, the record shows claimant went into the assistant manager's office on January 23, remarked that she had forgotten to fill in the PLE checklist for January 22, and wrote in the PLE book at that time. Audio Record ~ 27:27 to 28:30, 31:10 to 31:16. We agree with the ALJ that the preponderance of the evidence shows that claimant falsified the PLE checklist for January 22. We therefore conclude that claimant willfully violated the employer's ethics policy.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. Acts that create irreparable breaches of trust in the employment relationship make a continued relationship impossible, 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). Claimant's act of falsifying a workplace safety document was an intentional act of dishonesty sufficient to create an irreparable breach of trust in the employment relationship that made a continued relationship impossible. Her conduct therefore exceeded mere poor judgment, and does not fall within the exculpatory provisions of OAR 471-030-0038(3).

Claimant's conduct cannot be excused as a good faith error under OAR 471-030-0038(3)(b). Claimant willfully violated the employer's expectation that she refrain from falsifying regulatory documents. Her conduct therefore was not the result of an error in her understanding of the employer's expectations.

The employer discharged claimant for misconduct. Claimant is disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-17847 is affirmed.

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

DATE of Service: July 2, 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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