

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1027

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On May 1, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged for misconduct (decision # 142047). Claimant filed a timely request for hearing. On May 29, 2014, ALJ Clink conducted a hearing, and on June 5, 2014, issued Hearing Decision 14-UI-19058, affirming the Department's decision. On June 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Ron's Hotel and Restaurant, a servicer of hotel and restaurant equipment, employed claimant as its Medford office manager June 1, 1999 to April 14, 2014.

(2) Claimant worked without close supervision and customarily alone in the employer's Medford office. Her office hours were Monday through Friday, 8:00 A.M. to 5:00 p.m. with one hour for lunch, taken at a time chosen by claimant. At the end of the day, claimant was permitted to leave the office about 30 minutes early when she had to drop off a package or other mailing at the local United Postal Service (UPS) office about ten minutes away. When claimant left the office during work hours, she turned the office phone over to an answering service.

(3) The employer expected claimant to accurately and honestly report her work hours to the employer on handwritten and signed time cards she submitted for each pay period. Claimant was aware of the employer's expectation as a matter of common sense.

(4) In March 2014, the employer's owner received complaints that office personnel at the Portland corporate office "could never get a hold of her" when they tried to call claimant during office hours concerning billing, warranty and service issues and that the main receptionist in Portland received complaints from Medford clients that during office hours an answering service took their calls. Transcript at 6. The owner arranged to have the Medford office watched on April 2, 3 and 4 to determine when claimant was at the office.

(5) On April 2, claimant arrived at the office at 8:00 a.m., left at 1:54 p.m., arrived back at 3:02 p.m. and left for the day at 3:30 p.m. On April 3, claimant arrived at the office at 8:03 a.m., left at 2:44 p.m., arrived back at 3:56 p.m. and left for the day at 4:36 p.m. On April 4, claimant arrived at the office at 8:00 a.m., left at 1:59 p.m., arrived back at 3:15 p.m. and left for the day at 3:30 p.m. For each of those days, claimant reported on her signed time card that she worked from 8:00 a.m. to 1:30 p.m., took lunch until 2:30 p.m., and then worked from 2:30 p.m. until 5:00 p.m.

(6) On April 14, 2014, the employer discharged claimant for falsifying her time cards for April 2, 3, and 4, 2014.

CONCLUSIONS AND REASONS: We agree with the ALJ. 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) 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 report accurate information about her work hours on her time cards and claimant understood that expectation as a matter of common sense. Claimant violated that expectation when she falsely reported her work times on April 2, 3, and 4, 2014. Claimant did not dispute the times the owner reported she was at the Medford office on April 2, 3, and 4 or that her signed time card showed that she worked a full eight hours on each of those days, but asserted she had UPS mailings to deliver to the local UPS office on April 2 and 3. Transcript at 23-26. However, she also asserted it generally took her no more than 30 minutes to complete UPS mailings and could not account for the times she was away from the Medford office outside of her lunch periods and those 30 minute periods on April 2 and April 3 she was reportedly delivering mailings to UPS. *Id.* She candidly admitted she had “no idea” why she left the office at 3:30 p.m. on April 4 and did not dispute that she did not work during her lunch hours on other days to make up for her time away from the office for personal reasons. Transcript at 26. More likely than not, claimant understood she had not worked a full eight hours each day on April 2, 3 and 4, understood she was expected to report her work time accurately, and intentionally failed to do so. Accordingly, claimant’s conduct in falsely reporting her work times on April 2, 3, and 4 constituted willful violations of the employer’s expectations.

Claimant’s conduct cannot be excused as a good faith error or an isolated instance of poor judgment under OAR 471-030-0038(3)(b). Claimant did not sincerely believe, or have a factual basis for believing, the employer would condone her falsification of her time cards. To be considered an isolated instance of poor judgment, claimant’s conduct must have been a single or infrequent act, and must not have exceeded poor judgment by causing an irreparable breach of trust in the employment relationship. OAR 471-030-0038(1)(d). Claimant’s conduct was not isolated. Viewed objectively, claimant caused an irreparable breach of trust in the employment relationship by being intentionally dishonest for the purpose of concealing her absence from the office for personal reasons from the employer, particularly given that claimant customarily worked without close supervision and could not be trusted to work all her scheduled hours or accurately report her work hours. We have consistently held that even a single

dishonest act causes an irreparable breach of trust in the employment relationship, exceeds mere poor judgment and cannot be excused.¹

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits based on her work separation until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-19058 is affirmed.

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

DATE of Service: July 21, 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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¹ *See Morgan J. Wichman* (Employment Appeals Board, 13-AB-1101, July 26, 2013) (dishonesty about internet searches); *Brenda D. Barnes* (Employment Appeals Board, 11-AB-0651, March 11, 2011) (falsified time card entry); *Joseph A. Brucken* (Employment Appeals Board, 11-AB-0614, March 9, 2011) (falsified computer record); *Tara R. Pape* (Employment Appeals Board, 10-AB-3851, December 30, 2010) (falsified a certification card and lied that the card was stolen); *Rhonda M. Gosso* (Employment Appeals Board, 10-AB-1294, June 7, 2010) (lied during investigation); *Robert M. Bien* (Employment Appeals Board, 09-AB-0319, February 23, 2009) (falsified job application); *Jacob W. Smith* (Employment Appeals Board, 08-AB-1586, August 27, 2008) *Oregon Court of Appeals aff'd w/o opinion September 9, 2009* (dishonesty about whether work was performed); *Robert M. Stenerson* (Employment Appeals Board, 08-AB-0308, February 20, 2008) (dishonesty about absence); *Antone K. Allen* (Employment Appeals Board, 07-AB-0290, February 23, 2007) (dishonest about an injury); *Valerie A. Vititow* (Employment Appeals Board, 07-AB-0235, February 13, 2007) (dishonest about job skills); *Eric H. Holden* (Employment Appeals Board, 06-AB-1891, November 24, 2006) (dishonest about injury); *Olga C. Montano* (Employment Appeals Board, 05-AB-1218, September 7, 2005) (falsified job application).