

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1054

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On April 30, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82852). Claimant filed a timely request for hearing. On May 21, 2014, ALJ Seideman conducted a hearing, and on June 11, 2014 issued Hearing Decision 14-UI-19424, concluding the employer discharged claimant for misconduct. On June 17, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Hillsboro Chamber of Commerce employed claimant as its business development coordinator from December 7, 2012 to March 27, 2014.

(2) As business development coordinator, claimant was directed to provide outreach to the local Latino business community to determine their business needs, familiarize them with employer resources and encourage membership and participation. Although the employer gave claimant some flexibility to determine how to perform his job responsibilities, it expected him to prepare a weekly productivity report that demonstrated his efforts by including information such as the identity, methods and concerns of his contacts and to submit the report to his supervisor regularly each week so the employer could satisfy its own reporting requirements. Claimant was aware of the employer's expectations.

(3) Claimant routinely failed to either prepare his productivity reports or submit them in a timely fashion which caused friction between claimant and his supervisor and left the employer without a method to monitor claimant's efforts. Audio Record at 17:45 to 18:00, 23:00 to 24:00. The employer's president had "informal" and "formal" conversations with claimant in which she stressed providing timely reports was a "high priority" and necessary for the employer to evaluate claimant's outreach activities and utilize the information to increase its membership. Audio Record ~ 15:00 to 15:30. After such a conversation, claimant timely submitted some productivity reports but then failed to submit others as required. Claimant attributed his report submission failures to a "lack of focus" and "[failure to] prioritize." Audio Record ~ 21:00 to 21:40.

(4) On or about March 27, 2014, the employer's president concluded its expectations regarding job performance and increased Latino business membership that claimant was not meeting and decided that a work separation was necessary. The president notified claimant the employer intended to discharge him for unsatisfactory job performance but gave him the option to resign. Claimant resigned because he did not want a discharge on his employment record.

CONCLUSIONS AND REASONS: We agree with the ALJ. The employer discharged claimant for misconduct.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving; 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, the separation is a discharge. OAR 471-030-0038(2) (August 3, 2011). Claimant asserted that he reluctantly quit his job after the president asked him to resign and the president asserted that the employer had determined a performance based work separation was necessary but wanted to give claimant the option to quit. Because claimant was willing to continue the employment for an additional period of time but was not allowed to do so, the work separation was 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) (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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer asserted and claimant did not dispute that "the crux" of its decision to discharge claimant was his failure to regularly provide the productivity reports it required. Audio Record ~ 15:00 to 16:15. Claimant was aware of that expectation after numerous discussions about the need for the reports with his supervisor and the employer's president. Claimant did not dispute that he regularly violated that expectation after being told of the importance of timely reports, and by attributing his failures to provide them as required to his failures to "prioritize" them, he demonstrated that he was consciously indifferent to the employer's expectation. Consequently, claimant's conduct was at least wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. An act of poor judgment is isolated only if the exercise of poor judgment is a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d). Claimant exercised poor judgment by regularly failing to provide the reports as required. Those demonstrations of poor judgment in failing to prioritize the reports were part of a pattern of wantonly negligent behavior, and not a single or infrequent occurrence. Nor can claimant's conduct be excused as a good faith error in his understanding of the employer's expectations. Claimant accepted "blame" for his report failures after attributing them to his failures to prioritize them. Audio Record ~ 21:00 to 21:45.

The employer discharged claimant for misconduct under ORS 657.176(2). Claimant is disqualified from receiving unemployment insurance benefits until he has earned four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-19424 is affirmed.

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

DATE of Service: July 25, 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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