

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1114

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 12, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 150124). Claimant filed a timely request for hearing. On June 9, 2014, ALJ Shoemake conducted a hearing, and on June 13, 2014 issued Hearing Decision 14-UI-19582, affirming the Department's decision. On June 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Stream International Inc. employed claimant as a technical support professional from November 5, 2012 to April 17, 2014.

(2) The employer had a written policy stating that employees were not allowed to load any software to the employer's computer network without the express written consent of the employer's information systems department. The employer expected employees to refrain from using such software to bypass the employer's internet security settings. Claimant understood the employer's policy and expectations.

(3) Prior to December 15, 2013, claimant loaded internet browsing software to the employer's computer network without the information systems department's knowledge, and repeatedly used the software to bypass the employer's internet security settings to access websites blocked by the employer. Claimant knew his conduct violated the employer's policy and expectations. On December 18, 2013, the employer warned claimant that his conduct violated the employer's policy and expectations.

(4) Between December 16, 2013 and April 2, 2014, claimant again repeatedly bypassed the employer's internet security settings to access websites blocked by the employer. Claimant knew his conduct violated the employer's expectations. On April 10, 2014, the employer gave claimant a final written warning that his conduct violated the employer's expectations.

(5) On April 15, 2014, claimant again bypassed the employer's internet security settings to access websites blocked by the employer. Claimant knew his conduct violated the employer's expectations. On April 17, 2014, the employer discharged claimant for again bypassing the employer's internet security settings to access websites blocked by the employer.

CONCLUSIONS AND REASONS: We agree with the Department and 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. 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 had a right to prohibit employees from bypassing its internet security settings to access websites blocked by the employer. On April 15, 2014, claimant consciously engaged in conduct he knew violated the employer's expectations, and therefore willfully violated those expectations.

Claimant's conduct on April 15, 2014 cannot be excused as an isolated instance of poor judgment. To be isolated, the exercise of poor judgment must be 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)(A). Prior to December 15, 2013, claimant willfully violated the employer's expectations by loading internet browsing software to the employer's computer network without the information systems department's knowledge, and repeatedly using the software to bypass the employer's internet security settings to access websites blocked by the employer. Between December 16, 2013 and April 2, 2014, claimant willfully violated the employer's expectations by again repeatedly bypassing the employer's internet security settings to access websites blocked by the employer. Claimant's conduct on April 15, 2014 therefore was a repeated act and pattern of willful behavior, and not a single or infrequent occurrence.

Claimant's conduct on April 15, 2014 cannot be excused as a good faith error. Claimant understood the employer expected employees to refrain from using such software to bypass the employer's internet security settings. His conduct was not the result of an error in his understanding of the employer's expectations.

DECISION: Hearing Decision 14-UI-19582 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, 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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