

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1204

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 23, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 101558). The employer filed a timely request for hearing. On June 25, 2014, ALJ M. Davis conducted a hearing, and on June 27, 2014, issued Hearing Decision 14-UI-20584, concluding the employer discharged claimant for misconduct. On July 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her 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 her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). Accordingly, we considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) The United States Postal Service (USPS) employed claimant as an automation clerk from September 28, 1986 to March 28, 2014.

(2) The employer had a policy that prohibited employees from taking charge of a mail item and knowingly obstructing its delivery or "desert[ing]" it in violation of USPS procedures. Exhibit 1. The employer also had policies that prohibited employees from placing their personal bags on the workroom floor, placing mail items in their pockets or personal bags and being dishonest regarding work related matters. Transcript at 9-10; Exhibit 1. Claimant was aware of and understood the employer's expectations.

(3) A USPS automation clerk typically operated mail processing machinery used for mail distribution and performed other ad hoc duties related to mail handling. When a mail item such as a card or letter got “hung up” in an automated processing machine due to an open envelope flap or a tear in the mail item, the automation clerk was to remove it from the machine and place it in one of two nearby trays for the assigned “manual” clerk to pick up, repair and sort in another area of the workroom. Transcript at 11, 22-23.

(4) On December 23, 2013, an employee reported to a supervisor that she observed claimant take “a card” from her work area and carry it across the workroom floor, a distance of approximately 100 feet. Transcript at 6. The supervisor summoned a second supervisor and they walked over to the area where claimant had been seen with the card. When they did not see her, they looked inside claimant’s purse, which was on the workroom floor rather than in her locker, and observed the card, which was “kind of on the side of the purse, inside.” Transcript at 20. One supervisor removed the card, a Christmas card not addressed to claimant, and both supervisors observed that the card envelope had an open flap and that the card contained money that was visible. When claimant, who had just exited the locker room, approached the supervisors, they confronted her about the Christmas card. Claimant denied that there had been a card in her bag. However, she subsequently admitted “I brought a card over to tape it.” Transcript at 21. The employer placed claimant on administrative leave and conducted an investigation.

(5) After completing its investigation, the employer concluded that on December 23, 2013, claimant knowingly placed the Christmas card in her personal bag on the workroom floor in violation of several employer policies. On March 28, 2014, the employer discharged claimant, in part, for knowingly “obstructing the mail” and taking charge of a mail item without properly disposing of it in accordance with USPS procedures. Exhibit 1.

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) (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 reasonably expected that claimant would process mail items in accordance with USPS procedures and refrain from knowingly placing a mail item in her personal bag; claimant acknowledged she was aware of those expectations. Claimant violated those expectations on December 23 when she took a Christmas card she was processing as a mail item from her work area and placed it into her purse on the workroom floor. Although claimant denied placing the card into her purse, she was not credible. Her explanation that she brought the card over to the area where her purse was located, 100 feet away, to use a tape dispenser to tape the envelope flap shut was implausible because it was not one of her duties. In addition, she passed up opportunities to use tape dispensers both at her machine and at her supervisor’s desk, which was located 10 feet away from her machine. Transcript at 14-15, 22. Her explanation that she left other damaged pieces of mail at her machine when she took the Christmas card away to repair it because the card was the last mail item she had handled before heading over to her

purse was illogical. Transcript at 19. Her initial statement to the employer that she did not bring a mail item over to the area where her purse was located was inconsistent with her later statement to the employer that she brought a mail item to the area to tape it. Exhibit 1. Because claimant was not a credible witness, we found facts in dispute in accordance with the employer's evidence. Accordingly, on December 23, 2013, claimant took an opened Christmas card with money visibly inside it that she was processing as a mail item, carried it 100 feet away from her work area and placed it in her purse for no logical reason related to her work duties in violation of the employer's expectations. More likely than not, claimant's violation of the employer's expectations was willful.

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 tolerate her actions in removing a mail item from the distribution stream and placing it inside her personal bag. 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). Although claimant's conduct included only a single willful violation of the employer's expectation that she not obstruct delivery of a mail item, objectively considered, claimant caused an irreparable breach of trust in the employment relationship. Moreover, because she was evasive and inconsistent during the employer's investigation into her actions, the employer could no longer trust claimant regarding work-related matters.¹ Her conduct exceeded mere poor judgment and cannot be excused.

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

DECISION: Hearing Decision 14-UI-20584 is affirmed.

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

DATE of Service: August 15, 2014

¹ We have consistently held that even a single dishonest act, such as claimant's, causes an irreparable breach of trust in the employment relationship, exceeding mere poor judgment and cannot be excused. See *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), *AWOP, Smith v. Employment Department*, 230 Or App 756 (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. Vittow* (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).

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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