

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1231

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 141546). Claimant filed a timely request for hearing. On July 14, 2014, ALJ Seideman conducted a hearing and issued Hearing Decision 14-UI-21484, affirming the Department's decision. On July 18, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) RGIS, LLC, an inventory service company, employed claimant as an inventory auditor from October 1, 2007 to May 7, 2014.

(2) The employer expected its employees to report for work as scheduled or notify the employer a reasonable period of time prior to the start of their shift the reason they would be absent. Claimant was aware of the employer's expectations.

(3) On March 25, 2014, claimant did not report for work or notify the employer that he would be absent. On March 26, 2014, claimant reported to the district manager that he did not realize he had missed the shift due to a "traumatic incident" but assured her he would report on time for a scheduled inventory trip out of state that evening. Exhibit 3. However, that evening, claimant called the employer's office voicemail, after the inventory team had departed, and reported he was "not going to be able to make it" without explanation. Exhibit 3.

(4) On March 28, 2014, the district manager hand-delivered claimant a letter excusing his March 25 "no show/no call", restating the employer's attendance policy and warning claimant that from that day forward if he was going to miss a scheduled shift he would have to contact the district or area managers directly, further specifying "if you no show/no call or use the office voice mail to call off you will be terminated." Exhibit 3. After reading the letter, claimant told the district manager he understood the employer's expectation regarding the call off procedure for him. Exhibit 2.

(5) On May 7, 2014, claimant left a message on the employer's office voicemail five minutes prior to the start of a scheduled job that he would be absent. The employer did not receive the message until after the job was completed. When asked by the district manager why he did not call her or the area manager pursuant to her March 28 instructions, claimant responded that he "was stupid." Audio Record ~ 7:25 to 8:00. That day, the employer discharged claimant for using the office voicemail to notify the employer he would be absent five minutes prior to the start of scheduled shift.

CONCLUSIONS AND REASONS: We agree with the Department and 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. 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).

Barring exigent circumstances, the employer had the right to expect claimant to arrive for work on time or notify the district or area manager that he would be absent because claimant acknowledged he was aware of that expectation on March 28, 2014. Claimant violated that expectation on May 7, 2014, when he left a message on the employer's office voicemail that he would be absent five minutes prior to the start of his shift. Claimant candidly acknowledged at hearing that he had no "valid" reason for not following the manager's March 28 call off instructions. Audio Record ~ 11:00 to 11:30. Claimant's violation of the employer's notification expectation on May 7 demonstrated his indifference to the employer's interests and was at least wantonly negligent.

Claimant's May 7 conduct cannot be excused as an isolated instance of poor judgment. To be isolated, an 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). Claimant also exercised poor judgment on March 26, 2014, when he called the employer's office voicemail after the inventory team had already departed out of state and reported that he was "not going to be able to make it" without explanation. Exhibit 3. Nor was claimant's conduct the result of a good faith error in his understanding of the employer's expectations. Claimant acknowledged to the district manager on March 28 that he understood the employer's notification expectation.

The employer discharged claimant for misconduct. 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-21484 is affirmed.

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

DATE of Service:

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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