

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1419

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 82843). The employer filed a timely request for hearing. On July 17, 2014, ALJ R. Davis conducted a hearing, and on July 24, 2014 issued Hearing Decision 14-UI-22161, affirming the Department's decision. On August 13, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. The employer submitted written argument with its application for review. However, the employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore did not consider the employer's argument when reaching this decision.

FINDINGS OF FACT: (1) Sykes Enterprises Inc. employed claimant as a trainer from May 20, 2013 to May 23, 2014.

(2) The employer terminated claimant's employment for allegedly abandoning her job by failing to report for work, or notify her manager that she would be absent from work, from Monday, May 19 through Friday, May 23, 2014. However, claimant's manager did not schedule claimant to work that week, during which she maintained contact with her manager. Claimant was willing to continue working for the employer if she had been allowed to do so.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant's discharge was not 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 quit. OAR 471-030-0038(2)(a) (August 3, 2011). 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 by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).¹ 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.

In the present case, the employer presented only hearsay evidence to support its allegation that claimant abandoned her job by failing to report for work, or notify her manager that she would be absent from work, from Monday, May 19 through Friday, May 23, 2014. *See* Exhibit 1. Claimant testified that her manager did not schedule her to work that week, during which she maintained contact with her manager, and that she was willing to continue working for the employer after May 23, 2014 if she had been allowed to do so. Audio Record at 15:00. Absent a basis for concluding that claimant was not a credible witness, her sworn testimony outweighs the employer's hearsay evidence to the contrary. We therefore found facts in accordance with claimant's testimony, which shows that she was discharged, but did not engage in the alleged conduct for which she was discharged. The employer therefore discharged claimant, not for misconduct. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 14-UI-22161 is affirmed.

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

DATE of Service: September 17, 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 "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).