

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1759

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 143747). Claimant filed a timely request for hearing. On October 31, 2014, ALJ S. Lee conducted a hearing, and on November 4, 2014 issued Hearing Decision 14-UI-28130, affirming the Department's decision. On November 12, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted written argument to EAB, but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

Claimant also submitted documentary evidence to EAB that he previously submitted at hearing as a portion of Exhibit 1. The ALJ excluded Exhibit 1 because it was unduly repetitious of claimant's testimony, and because claimant did not provide it to the employer before the hearing in accordance with OAR 471-040-0023(4). We agree that claimant's documentary evidence was unduly repetitious of his sworn testimony about the events leading to his discharge, and that the record shows claimant did not submit Exhibit 1 to the employer before the hearing. The ALJ therefore did not err in excluding the documentary evidence.

FINDINGS OF FACT: (1) R-L Carriers Shared Services LLC employed claimant from May 22, 2014 to September 5, 2014 as a Class A city driver transporting hazardous materials.

(2) A commercial driver license (CDL) with a hazardous materials endorsement (HME) was necessary for claimant to work legally as a Class A city driver transporting hazardous materials. The employer therefore expected claimant to maintain a CDL with a HME while he worked for the employer. Claimant understood the employer's expectations.

(3) Claimant received a renewal notice from the Washington State Department of Licensing warning him that he needed to renew his CDL, and that it would expire on September 5, 2014. Claimant's employer also reminded him "multiple times" prior to September 5, 2014 that he needed to renew his license. Transcript at 7. Claimant was aware he needed to complete the renewal process for his CDL and HME by September 5, 2014.

(4) Claimant did not confirm the HME renewal requirements with the Washington Department of Motor Vehicles (DMV) or begin his license renewal process before September 6, 2014. Until September 6, 2014, claimant mistakenly believed he had to complete a background check that took six weeks to process to renew his HME.

(5) Claimant had financial difficulties due to his child support obligations. It cost approximately \$100 to renew the CDL and maintain the HME. Claimant planned to use his September 5, 2014 paycheck to pay to renew his CDL and HME, and had the day off work to do so. Claimant normally received his paycheck by noon on pay day.

(6) When claimant went to pick up his check on September 5, claimant told his supervisor that he would not have a HME for approximately six more weeks because he had not yet begun a background check. The supervisor told claimant he would discuss with the human resources department whether the employer would continue to employ him. Claimant's September 5 paycheck was lost in transit, so claimant received his wages later than normal, at 3:15 p.m. Claimant did not apply to renew his CDL and HME that day because he did not have money to pay the renewal fees until after 3:15 p.m. The employer discharged claimant on September 5, 2014 because claimant stated he would not have a HME for six more weeks.

(7) On September 6, 2014, claimant went to the DMV to renew his CDL and HME. The DMV told claimant he did not have to complete a background check and wait six weeks to renew the HME if he renewed the HME together with the CDL. Claimant was unable to renew the CDL or HME on September 6 because he failed a hazardous materials knowledge test necessary to keep the HME.

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)(c) (November 1, 2009) provides that the willful or wantonly negligent failure to maintain a license, necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual. 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.

It is undisputed that claimant knew the employer required him to maintain a valid CDL with a HME because driving commercial vehicles transporting hazardous materials was necessary to the performance

of his occupation. The issue is whether claimant's failure to learn the requirements and apply to renew his CDL and HME, which directly led to his failure to maintain his CDL and HME, was willful or wantonly negligent.

Claimant was aware before his licenses expired that he needed to complete the steps to renew them by September 5, 2014. Regardless of whether claimant did, in fact, have to pass a background check, he knew or should have known that he probably would not complete his license renewal before it expired if he waited until after noon on the date his license expired to apply for a renewal. Claimant attributed his failure to renew his license and endorsement earlier to an inability to pay the renewal fees due to child support obligations. Transcript 13-14. However, we infer that claimant's child support payments were foreseeable. Claimant knew or should have known that he would have to pay fees to renew his license and endorsement, giving him time to plan for the expense. Claimant did not show he made any attempt to obtain the money necessary to pay the \$100 renewal fees from a source other than from his September 5 paycheck. Although claimant received his paycheck later than normal on September 5, had claimant, at minimum, inquired at DMV before September 5 about the renewal requirements, he would have learned that he could complete his applications without waiting an additional six weeks for a background check. He therefore would not have given the employer the erroneous information that he would not have a HME endorsement for six more weeks. Moreover, the reason claimant failed to renew his license on September 6 was his inability to pass the HME test. Claimant should have known the test was required, and the record does not show claimant made any attempt to prepare for it.

Claimant's failure to complete the steps necessary to renew his CDL and HME demonstrated indifference to the consequences of his actions. His failure to maintain a valid CDL with a HME therefore was wantonly negligent, and reasonably attributable to him. The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-28130 is affirmed.

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

DATE of Service: December 18, 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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