

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1786

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 12, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 74631). The employer filed a timely request for hearing. On November 13, 2014, ALJ Seideman conducted a hearing, and on November 13, 2014 issued Hearing Decision 14-UI-28631, concluding that claimant's discharge was for misconduct. On November 18, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Good Samaritan Hospital employed claimant as a housekeeper from July 5, 2002 to August 22, 2014.

(2) The employer expected its housekeepers to complete and turn in daily logs of their cleaning activities. Claimant understood that expectation. In 2011, claimant repeatedly failed to complete and turn in daily logs of her cleaning activities. The employer warned claimant that she was expected to do so. Claimant improved at turning in her daily logs, but repeatedly turned in logs that failed to account for several hours of her shifts. The owner warned claimant that her daily logs were expected to account for all hours of her shifts. Claimant understood that expectation.

(3) Claimant's daily logs improved temporarily, but she later repeatedly failed to turn in daily logs that accounted for all hours of her shifts. The employer repeatedly warned claimant that she was expected to do so. Claimant continued to turn in incomplete daily logs because she believed it was a "[w]aste of time writing everything down." Transcript at 14.

(4) On July 2, 2014, the employer again warned claimant that she was expected to turn in daily logs that accounted for all hours of her shifts. From July 2, 2014 through August 20, 2014, claimant continued to turn in incomplete daily logs. The employer discharged claimant, in part, for that reason.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's discharge was 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. In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

At hearing, claimant asserted that the employer's expectation that she turn in daily logs of her cleaning activities that accounted for all hours of her shift was unreasonable because the employer did not expect other housekeepers to do so, and it was impossible to complete her daily logs and get her work done. Transcript at 18, 37. However, it was not unreasonable for the employer to expect claimant to turn in daily logs of her cleaning activities that accounted for all hours of her shift, especially given claimant's history of failing to turn in daily logs, and turning in daily logs that failed to account for several hours of her shifts. Nor does the record support claimant's assertion that she could not complete her daily logs in addition to her other work. The employer therefore had a right to expect claimant to turn in daily logs that accounted for all hours of her shift. In deliberately failing to do so, claimant consciously engaged in conduct she knew violated the employer's expectations, and therefore willfully violated those expectations.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. For an act 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). Claimant willfully turned in daily logs that failed to account for all hours of her shifts on multiple occasions. Her exercise of poor judgment therefore was a repeated act, and not a single or infrequent occurrence.

Claimant's conduct cannot be excused as a good faith error. Claimant did not assert or show that she sincerely believed, or had a rational basis for believing, that continuing to turn in incomplete daily logs complied with the employer's expectations.

The employer discharged claimant for misconduct. Claimant is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-28631 is affirmed.

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

DATE of Service: December 23, 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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