

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1796

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 133415). The employer filed a timely request for hearing. On October 29, 2014, ALJ Triana conducted a hearing, and on November 3, 2014 issued Hearing Decision 14-UI-28016, affirming the Department's decision. On November 20, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) JP Morgan Chase Bank employed claimant from September 6, 2011 to August 18, 2014 as a relationship banker.

(2) The employer expected employees to follow five "key" practices to ensure a positive customer experience. The employer also expected relationship bankers to build lasting customer relationships, engage customers, and increase sales.

(3) On March 10, 2014, the employer gave claimant a written warning for unsatisfactory performance, stating claimant did not provide satisfactory "customer experience" and did not consistently execute relationship banker behaviors including engaging customers, setting appointments, and acquiring new customers. Exhibit 1. Claimant understood the employer expected him to show immediate and sustained improvement in both areas, or the employer would discharge him.

(4) Claimant increased his sales performance in June and July, 2014.

(5) On July 27, 2014, the employer gave claimant a performance review advising claimant that he met the employer's expectations regarding customer experience and some of his relationship banker duties, including developing business relationships by telephone, contacting high balance customers and growing customer balances. The employer also advised claimant that he needed to improve other relationship banker duties, including developing business relationships with customers in the branch,

recommending additional services to customers, using transition statements with customers, and acquiring new customers. Exhibit 1.

(6) Claimant's manager coached him several times per week during August 2014. Claimant's manager told him on August 1, 2014 that it expected claimant to dedicate time each day to making telephone calls to acquire new customers. The employer also expected bankers to give priority to assisting customers present in the branch.

(7) After his manager coached him about increasing his call time each day, claimant set aside time each day to make sales calls, increased his calls to business clients, and improved his use of transition statements to increase sales. At times, claimant gave priority to assisting customers in the branch over completing sales calls. Claimant tried to make sales calls earlier in the day, before customers arrived at the branch. Claimant communicated with his coworkers to arrange time away from customers in the branch so he could make sales calls.

(8) On August 4, 2014, claimant's manager coached him because he did not complete his call time. On August 11, 2014, claimant's manager coached him because he did not acquire new business from customers.

(9) Claimant increased his sales during August 2014.

(10) On August 18, 2014, the employer discharged claimant due to unsatisfactory performance.

CONCLUSIONS AND REASONS: The employer discharged claimant, but not 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. Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b). The employer bears the burden to prove misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant because it was dissatisfied with his job performance. Claimant's manager testified that it discharged claimant when he did not improve his performance after receiving warnings and coaching from the employer. Audio Record at 11:27 to 11:43. However, the record shows claimant did improve his performance, and met the employer's expectations regarding "customer experience" and some of his relationship banker duties before his July 27, 2014 performance review. Thereafter, the employer told claimant to prioritize his sales call time. Claimant testified persuasively that the employer had instructed him to give first priority to customers in the branch, and that he did not always complete his call time because he was assisting customers in the branch. Audio Record at 25:09

to 25:25. Claimant attempted to address this issue by making calls before the bank opened for customers and asking coworkers to assist customers when he needed to complete his call time.

Based on claimant's efforts to improve how he performed his relationship banker duties, the record fails to show that claimant consciously violated the employer's performance expectations, or consciously engaged in conduct he knew or should have known would probably result in his doing so. The employer also failed to show that claimant's conduct was the result of indifference to the consequences of his actions, and not mere inefficiency resulting from lack of job skills. Thus, we cannot find that claimant's failure to meet the employer's performance expectations was willful or wantonly negligent.

The employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 14-UI-28016 is affirmed.

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

DATE of Service: December 31, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.