

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1866

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 132000). Claimant filed a timely request for hearing. On November 21, 2014, ALJ Triana conducted a hearing, and on November 24, 2014 issued Hearing Decision 14-UI-29221, affirming the Department's decision. On December 9, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Marion County District Attorney's office employed claimant from June 22, 1998 to September 19, 2014 as a legal secretary.

(2) Claimant's duties included processing all incoming police reports for Marion County, and using Law Enforcement Data Systems (LEDS) to obtain police records and personal information regarding individuals named in the police reports. The employer expected employees to follow a confidentiality agreement requiring them to refrain from communicating any information received about any case to others without a valid work-related purpose. Exhibit 1. Claimant understood the employer's expectations.

(3) At 12:02 p.m. on November 21, 2012, claimant sent her daughter a text message stating, "Hey Roy's sister is in trouble just got a report for her doing meth." Exhibit 1. Claimant processed a police report involving the individual referenced in the text message while conducting her work duties on November 21. Information regarding the woman's arrest was not available to the public at that time. Claimant did not have a valid, work-related purpose for giving her daughter the information in the text message.

(4) On September 19, 2014, the employer discharged claimant for breaching its confidentiality agreement.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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. 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). Isolated acts exceed mere poor judgment if they violate the law, are tantamount to unlawful conduct, create irreparable breaches of trust in the employment relationship or otherwise make a continued relationship impossible. OAR 471-030-0038(1)(d)(D).

The employer had a reasonable confidentiality policy prohibiting employees from disclosing any information received about any case to others without a valid work-related purpose. Claimant understood the employer's expectations. The employer discharged claimant for sending text messages disclosing confidential information. The preponderance of evidence shows that claimant's conduct on November 21, 2012 in sending her daughter a text message containing information from a police report claimant read at work was a willful violation of the employer's reasonable confidentiality policy.

Claimant's conduct on November 21 created an irreparable breach of trust in the employment relationship and thus exceeded mere poor judgment and does not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d)(D). Claimant's job duties required her to review every police report filed for Marion County, and to access LEADS information for individuals named in the reports. Viewed objectively, it was reasonable that an employer would no longer trust claimant to follow its confidentiality policy, especially where claimant's position required her to continually review and access confidential information. Moreover, the employer testified persuasively that breaches of confidentiality undermine public trust in the district attorney's office and impact public safety. Transcript at 24-25. Claimant's conduct created an irreparable breach of trust in the employment relationship, and thus exceeded mere poor judgment, and does not fall within the exculpatory provisions of OAR 471-030-0038(3).

Claimant's conduct cannot be excused as a good faith error under OAR 471-030-0038(3)(b). In sending the November 21, 2012 text message to her daughter, claimant willfully violated the employer's expectation that she refrain from disclosing confidential information she reviewed at work. Her conduct was not the result of an error in her understanding of the employer's expectations.

DECISION: Hearing Decision 14-UI-29221 is affirmed.

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

DATE of Service: January 22, 2015

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.