

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0018

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 23, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 74401). Claimant filed a timely request for hearing. On December 30, 2014, ALJ Shoemake conducted a hearing, and on December 31, 2014, issued Hearing Decision 14-UI-31112, affirming the administrative decision. On January 12, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) From February 24 to September 29, 2014, Asante Physician Partners employed claimant as a medical assistant.

(2) Claimant knew and understood that an essential function of her job was to enter patient information into the EPIC system, an electronic medical record system the employer used to document patient care. Claimant's job duties included speaking with patients by telephone; she understood that she was expected to record information received during these telephone calls in the EPIC system immediately after she completed the call.

(3) On August 21, 2014, claimant placed an order for medical equipment for a patient without obtaining authorization from the patient's health care provider to do so. On September 4, 2014, the employer gave claimant a written corrective action for ordering medical equipment without appropriate authorization.

(4) On September 29, 2014, the employer discharged claimant because it believed that on September 16, 2014, she failed to document important information in a patient's EPIC medical record.

CONCLUSION 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. In a discharge case, the employer has the burden to establish misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

Claimant knew and understood that entering information into the EPIC electronic medical record system was an essential requirement of her position. The employer discharged claimant because it believed that on September 16, 2014, she failed to document important patient information in the EPIC system.

Neither of the employer's two witnesses, however, explained specifically what claimant did or failed to do on September 16. Although the employer's human resources manager testified that claimant failed to document important patient information in the EPIC system on September 16, she never stated what information claimant did not enter. Audio Record at 8:53. When claimant's supervisor was asked what claimant failed to document in the EPIC system on September 16, he responded that he did not have "that information in front of him" and could not answer the question. Audio Record at 26:56. Because the employer failed to establish any specific violation of its expectations regarding entering data in the EPIC system, it did not meet its burden to prove that claimant engaged in misconduct. Claimant is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 14-UI-31112 is affirmed.

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

DATE of Service: February 24, 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.

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