

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0033

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 140936). Claimant filed a timely request for hearing. On January 9, 2015, ALJ Shoemake conducted a hearing, and on January 12, 2015 issued Hearing Decision 15-UI-31693, concluding that claimant quit work without good cause. On January 15, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Oregon Health & Sciences University employed claimant from April 2, 2007 to November 30, 2014.

(2) The employer prohibited employees from clocking other employees in to work. Claimant understood the employer's expectations.

(3) Prior to November 7, 2014, claimant repeatedly clocked another employee in to work to conceal that the employee was going to be late for work. Claimant knew his conduct violated the employer's expectations. On November 7, 2014, the employer suspended claimant and conducted an investigation.

(4) After completing its investigation, the employer intended to discharge claimant for clocking the other employee in to work. On November 30, 2014, claimant resigned rather than contest the discharge through his union.

(5) Claimant quit work to avoid a potential discharge.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant quit work without good cause.

A claimant who quits work is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Quitting work without good cause includes a resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct. OAR 471-030-0038(5)(b)(F) (August 3, 2011). OAR 471-030-0038(3)(a) 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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

In this case, claimant quit work to avoid a potential discharge for repeatedly clocking another employee in to work to conceal that the employee was going to be late for work. The employer had a right to prohibit employees from clocking other employees in to work. Claimant understood the employer's expectations, and consciously engaged in conduct he knew violated those expectations. Claimant therefore willfully violated the standards of behavior which an employer has the right to expect of an employee.

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). At hearing, claimant admitted that he clocked the other employee in to work on a weekly basis over a period of one to two months. Audio Record at 11:15. Claimant's 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 he sincerely believed, or had a rational basis for believing, that clocking the other employee in to work complied with the employer's expectations.

In sum, claimant quit work to avoid a potential discharge for misconduct. He therefore quit work without good cause under OAR 471-030-0038(5)(b)(F), and is disqualified from the receipt of benefits.

DECISION: Hearing Decision 15-UI-31693 is affirmed.

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

DATE of Service: February 25, 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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