

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0036

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 21, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 130924). Claimant filed a timely request for hearing. On December 30, 2014, ALJ Clink conducted a hearing, and on January 5, 2015 issued Hearing Decision 15-UI-31271, concluding the employer discharged claimant, but not for misconduct. On January 16, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. The employer submitted written argument, failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond the employer's reasonable control prevented it from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Western Panel Manufacturing Inc. employed claimant from September 23, 2012 to August 11, 2014, last as a sawyer.

(2) The employer expected its employees to comply with its written work safety rules. With respect to the tennenor saw claimant operated, the work safety rules instructed employees to keep work areas clean and free of debris, but to keep hands and clothing clear of all belts, chains and blades during operation. Claimant received a copy of the work safety rules, and signed a statement that he understood he was expected read and comply with the rules, when he was hired on September 23, 2012.

(3) When operating the tennenor saw, claimant periodically removed debris from a sprocket that turned a chain, which turned a conveyor belt adjacent to claimant's work area. The employer's owner generally discouraged employees from turning off equipment. The employer's lead sawyer did not tell claimant to turn off the conveyor belt or use a "pusher stick" when removing debris from the sprocket. Transcript at 30. Claimant routinely removed debris from the sprocket by hand without turning off the conveyor belt. Claimant was never told that he was violating the employer's work safety rules or expectations. Claimant believed he was complying with the employer's expectations.

(4) On July 10, 2014, claimant again removed debris from the sprocket by hand without turning off the conveyor belt. The chain caught claimant's glove and pulled his hand through the sprocket, severing the fingers on claimant's left hand. The employer discharged for removing debris from the sprocket by hand without turning off the conveyor belt.

CONCLUSIONS AND REASONS: The employer failed to establish 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. 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 evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

Claimant arguably should have known from the employer's work safety rules and as a matter of common sense that he was prohibited from removing debris from the sprocket without turning off the conveyor belt. However, claimant believed he was allowed to do so because the employer's owner generally discouraged employees from turning off equipment, its lead sawyer did not tell claimant to turn off the conveyor belt or use a "pusher stick," and claimant was never told he was violating the employer's work safety rules or expectations. Claimant therefore sincerely believed, and had a rational basis for believing, that removing the debris by hand without turning off the conveyor belt complied with the employer's expectations. His conduct was the result of a good faith error in his understanding of those expectations. Good faith errors are not misconduct.

The employer discharged claimant for a good faith error, and not misconduct. Claimant is not disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 15-UI-31271 is affirmed.

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

DATE of Service: February 26, 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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