

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0070

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct (decision # 103040). The employer filed a timely request for hearing. On January 21, 2015, ALJ M. Davis conducted a hearing, and on January 22, 2015 issued Hearing Decision 15-UI-32197, affirming the Department's decision. On January 26, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Seven Feathers Truck and Travel Corp. employed claimant from April 18, 2010 to November 11, 2014 as a guest services associate.

(2) The employer expected claimant to follow its cash-handling procedures. Claimant held funds she received while working in an employee wallet, and periodically deposited the funds into a cashier's till. The employer expected claimant to count the money from her wallet in front of a cashier before depositing the money into the cashier's till.

(3) Claimant made deposits with no cashier present before October 23, 2014, and never received a warning for doing so.

(4) On October 23, 2014, when claimant made her first deposit into a cashier's till, the cashier was not present when claimant began counting the money for the deposit. The cashier was also the manager on duty. Before claimant deposited the funds into the manager's till, the manager appeared and told claimant, "Stop, stop, I'm supposed to be looking." Audio Record at 20:44 to 20:50. The manager checked the amount claimant had counted, and signed a paper acknowledging it was correct.

(5) Later that day, at the end of claimant's shift, claimant deposited funds from her wallet into the same manager's till when the manager was not present.

(6) On November 11, 2014, the employer discharged claimant for failing to follow cash handling procedures.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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).

The employer discharged claimant because she violated its cash-handling procedures on October 23, 2014 by failing to count the funds from her wallet in front of a cashier before depositing the funds into the cashier's till. At hearing, the employer's manager asserted that claimant knew or should have known from her training at hire and the manager's comments to claimant when she made her first deposit on October 23 that the employer expected her to refrain from making deposits when the cashier was not present to count the deposit. Audio Record at 7:58 to 8:23, 9:38 to 10:09. However, we find the evidence as to whether claimant knew or should have known she was expected to have a cashier count all deposits equally balanced. Claimant testified that she counted the funds for a deposit in front of a cashier if a cashier was present, but was not told that the employer expected a cashier to count all till deposits. Audio Record at 19:37 to 20:11, 20:32 to 21:00. The manager's remark to claimant on October 23 was not inconsistent with claimant's understanding of the employer's expectations about deposits, because the manager appeared while claimant was making the first deposit. Claimant had completed deposits when cashiers were not present in the past, and received no warnings for doing so. Nor do we find the employer's expectations so obvious that we infer claimant knew or should have known it as a matter of common sense that her conduct probably violated those expectations. The employer therefore failed to establish that claimant violated its expectations willfully or with wantonly negligence.

We therefore conclude that claimant's discharge was not for misconduct. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 15-UI-32197 is affirmed.

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

DATE of Service: March 6, 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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