

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0167

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 15, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 115233). Claimant filed a timely request for hearing. On January 30, 2015, ALJ Vincent conducted a hearing, and on February 5, 2015, issued Hearing Decision 15-UI-32997, affirming the administrative decision. On February 18, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) From August 29, 2011 through November 7, 2014, Samaritan Health Services employed claimant as an administrative assistant.

(2) The employer expected that employees would “swipe” their employee badges into the employer’s time system when they arrived at their work station; the time system would then automatically record the time they reported for work. Employees also used their badges to enter the lot where they parked their cars, and the building where they worked. A failure to “swipe” a badge at the work station was called a missed punch, and an employee was expected to have an entry made in the time records to accurately report work hours for any day on which the employee missed a punch. Claimant knew and understood the employer’s procedure regarding time records.

(3) On August 7, 2014, the manager responsible for overseeing the employer’s time system sent claimant an email in which she told claimant that claimant should not make entries in her time records for days on which she missed punches, or for days on which she had scheduled or unscheduled absences. She told claimant to submit any such entries to her, the time system manager, who would then enter the claimant’s work hours into the time system. Transcript at 42.

(4) On August 13, 2014, claimant entered the building where she worked at 7:42 a.m. She missed a punch, but made an entry in the time system that she started work at 7:30 a.m. Transcript at 11.

(5) On August 29, 2014, claimant entered the building where she worked at 8:40 a.m. She missed a punch, but made an entry in the time system that she started work at 7:20 a.m. Transcript at 11.

(6) On September 3, 2014, claimant entered the parking lot at 7:39 a.m. She missed a punch, but made an entry in the time system that she started work at 8:30 a.m.(Transcript at 12.

(7) On September 5, 2014, claimant entered the parking lot at 7:39 a.m. She missed a punch, but made an entry in the time system that she started work at 7:32 a.m. Transcript at 12.

(8) On October 9 and 10, 2014, claimant was ill and did not report to work. On October 20, 2014, she reviewed her time records to submit to her supervisor. Claimant forgot that she had been absent on October 9 and 10, and mistakenly concluded she had simply missed punches on those days. As a result, she made entries that October 9 and 10 were days on which she had worked. Transcript at 26-27.

(8) On October 31, 2014, claimant entered the parking lot at 10:32 a.m. She missed a punch, but made an entry in the employer's time system that she started work at 10 a.m. Transcript at 12.

(9) In early November, claimant's supervisor began an investigation into claimant's time records because of concern about the number of absences and incidents of tardiness claimant had accumulated. In the course of this investigation, the supervisor discovered several dates on which there were discrepancies between the time claimant entered the building or parking lot, and the time claimant reported she started work. In addition, the supervisor discovered that claimant was absent on October 9 and 10, 2014.

(10) On November 7, 2014, the employer discharged claimant for submitting false time records.

CONCLUSION AND REASONS: We agree with the ALJ that 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. 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. Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b) (August 3, 2011). 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).

The employer had a right to expect that claimant would accurately record time worked. Claimant knew and understood this employer expectation as a matter of common sense. The record demonstrates that the employer discharged claimant for allegedly falsifying her time records by: (1) inaccurately recording the time she started work on several occasions in August, September and October, 2014, and (2) inaccurately recording October 9 and 10, 2014, as days on which she worked. We analyze claimant's actions to determine if the employer met its burden to demonstrate that they constituted misconduct.

In regard to claimant's failure to report her absences on October 9 and 10, 2014, claimant testified that this occurred because of a mistake. Claimant asserted that she forgot she had been absent on these days, and, as a result, reported October 9 and 10 as work days on the time records she submitted to her supervisor. Claimant may have been negligent in failing to keep better records of her absences, but her actions do not demonstrate a conscious disregard of the employer's expectations and do not, therefore, constitute wanton negligence.

In regard to claimant's inaccurate entries in the time system regarding the time she started work, claimant offered no specific explanation for most of these inaccuracies, and testified only that she could not remember what may have happened on most of the dates at issue. Transcript at 29, 32. In addition, we note that all of the dates on which claimant failed to accurately report her time involved missed punches. Claimant knew, as a result of an August 7, 2014 email from the time system manager, that she was not to record her time on any day when she missed a punch. Instead, claimant knew that she was to report any missed punch to the time system manager, who would then make the appropriate entry in the time records. Claimant did not follow this procedure and did not tell the time system manager about missed punches on the several days at issue – August 13 and 29, September 3 and 5, and October 31, 2014. Based on claimant's failure to report these missed punches to the time system manager, we reasonably infer that she knew her actions violated the employer's procedures regarding time records and did not want to bring these violations to the employer's attention. We therefore conclude that claimant acted in conscious disregard of the employer's expectations when she failed to accurately report the time she started work on August 13 and 29, September 3 and 5,¹ and October 31, 2014.

Claimant's actions cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). As discussed above, claimant failed to accurately report the time she started work on five occasions. Nor can claimant's actions be excused as a good faith error. Claimant could not reasonably have believed that the employer would condone her actions in intentionally submitting inaccurate time records.

The employer discharged claimant for misconduct, and claimant is disqualified from receiving unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 15-UI-32997 is affirmed.

¹ Claimant testified that on September 5, 2014, she received a text from her supervisor about a work matter at 6:55 a.m. and replied to the supervisor in a 7:30 a.m. text. Claimant offered these facts as proof that she was actually at her work station when she replied to her supervisor. Claimant's 7:30 a.m. text to her supervisor is not persuasive evidence regarding claimant's location at that time; claimant could have texted her supervisor from any location.

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

DATE of Service: April 3, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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